STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-849

April 10, 2002

Inquiry Regarding the Entry of Verizon-Maine Into the InterLATA (Long Distance) Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996

FINDINGS REPORT

FINDINGS OF THE MAINE PUBLIC UTILITIES COMMISSION ON VERIZON MAINE'S COMPLIANCE WITH SECTON 271 OF THE TELECOMMUNICATIONS ACT OF 1996

I. INTRODUCTION

On March 21, 2002, Verizon Maine (Verizon) filed an application with the Federal Communications Commission (Commission or FCC) pursuant to Section 271 of the Telecommunications Act of 1996 (TelAct) requesting authority to provide in-region, interLATA services in Maine. Section 271(d)(2)(B) requires the FCC to consult with the state regulatory commission of any state that is the subject of a 271 application to verify the Regional Bell Operating Company's (RBOC) compliance with the requirements of subsection 271(c) of the Act. Accordingly, we provided a report to the FCC today regarding our review of Verizon's compliance with Section 271 of the TelAct based upon the findings made below.

II. SUMMARY

The Commission finds, based upon the record before us, including the commitments made by Verizon in its March 4, 2002 letter to us, that Verizon meets the Section 271 Competitive Checklist. We also find that the measures we have put in place to ensure Verizon's continued compliance with the Checklist, namely the Performance Assurance Plan (PAP) and Rapid Response Process (RRP), are essential to our determination that Verizon meets the requirements of Section 271.

III. PROCEDURAL HISTORY

On October 18, 2000, we opened an inquiry into the entry of Verizon into the interLATA (long distance) telephone market pursuant to Section 271 of the TelAct . We began our investigation into Verizon's compliance with the TelAct's

14 point competitive checklist in 47 U.S.C. § 271(c). In November 2000, Verizon informed us that it did not wish to proceed with its 271 application at that time; thus we suspended our examination. In the interim, as part of our preparation for considering a future 271application, we began to examine Verizon's proposed Carrier-to-Carrier Metrics (C2C Metrics) as well as the establishment of a Performance Assurance Plan (PAP).

Verizon re-initiated the present proceeding with a filing on October 18, 2001. The following parties participated in this proceeding: The Maine Office of the Public Advocate (OPA), the Telephone Association of Maine (TAM), CTC Communications Corp. (CTC), WorldCom, AT&T Communications (AT&T), Association of Communications Enterprises (ASCENT), the CLEC Coalition (Mid-Maine Communications (Mid-Maine), Revolution Networks (RevNet), Pine Tree Networks, and Oxford Networks), Conversent Communications of Maine, LLC, Lightship Telecom, LLC, Network Plus, Inc., and Freedom Ring Communications d/b/a Bayring Communications.

Our examination of Verizon's wholesale service included an investigation of Verizon's compliance with the 271 Checklist as well as the establishment of C2C metrics and a PAP to ensure continued compliance with the 271 Checklist after interLATA entry. Our inquiry was not an adjudicatory proceeding under Maine law, but it had many of the procedural aspects of such a proceeding and allowed the development of an adequate evidentiary foundation for the recommendation we provide herein. The investigation included several workshops, technical conferences, a bench analysis, declarations, reply declarations, responses to data requests, exhibits, briefs, and letters submitted by Verizon, OPA, other telecommunications providers, and other interested persons. In addition, we conducted two days of hearings in which witnesses were cross-examined.

In addition to the record from the 271 investigation, decisions in several other proceedings have informed our evaluation. Specifically, on February 12, 2002, March 8, 2002, and March 20, 2002, we issued final Orders in our TELRIC[1] pricing proceeding, thus setting rates for Verizon's provision of unbundled network elements (UNEs) and interconnection. We adopted four major sets of rates for Verizon: recurring rates, non-recurring rates, rates for collocation, and rates for interconnection services. The TELRIC case was conducted over the course of five years and generated a voluminous record upon which we based our decisions. We expect that the TELRIC rates we have set will encourage facilities-based competition in Maine, as the new rates are lower than the rates that have been in place since 1996 and are similar to, or lower than, rates in states with higher levels of local competition.

In addition to the TELRIC case, four meetings which we hosted during 2001 concerning Verizon's wholesale service helped inform our evaluation.[2] The meetings helped illuminate details of the current competitive landscape in Maine as well as clarify procedures for CLECs to use when ordering wholesale

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[1] *See* Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements, Docket No. 97-505, Orders issued on February 12, 2002, March 8, 2002, and March 20, 2002. Documents related to the TELRIC case are available on our web site at http://mpuc.informe.org/ or in Appendix E of Verizon's FCC filing.

[2] The first meeting, in April 2001, was only with CLECs. Verizon attended the next three, held in June, August, and November 2001.

services. The meetings also highlighted potential improvements Verizon could implement in its wholesale operations. We intend to continue these meetings on a quarterly basis until they no longer are considered necessary or useful.

Our CLEC/Verizon meetings have enhanced all parties' understandings of the processes used in obtaining wholesale services from Verizon and the need for third-party intervention when the processes break down. Indeed, our experience in these meetings fostered our belief that a Commission-sponsored resolution process (such as the Rapid Response Process described below) is necessary to facilitate the growth of the competitive telecommunications market in Maine. These meetings have also helped to focus our efforts in crafting a PAP that is appropriate for the specific competitive market in Maine.

IV. COMPLIANCE WITH CHECKLIST ITEMS

A. Introduction

We have reviewed the record and the arguments that have been made in briefs, comments, and at the hearings. In our discussion below of each of the contested Checklist items, we will summarize the arguments made to us and describe the resolution we have reached, including any commitments on the part of Verizon to change its policies and procedures. With regard to those Checklist Items that were not contested, Nos. 6, 7, 8, 9, 10, and 11, we accept Verizon's representation that it meets the requirements of Section 271 and do not provide any specific analysis.

B. Checklist Item No. 1: Interconnection

1. Applicable Law

Section 271(c)(2)(B)(i) of the TelAct requires Verizon to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)" between its network and the network of any requesting telecommunications carrier. Though collocation is not explicitly included in the 271 Checklist, Section 251(c)(6) states that an ILEC has the "duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." With respect to the quality of interconnection, the FCC has concluded that the level of quality must be at least equal to that which the ILEC provides itself, a subsidiary, an affiliate, or any other party.

2. Interconnection Agreements

a. Positions of the parties

Mid-Maine. In its declaration, Mid-Maine documented a series of meetings over a 6-month period relating to its attempt to amend its interconnection agreement.[3] The meetings produced no tangible result other than the expenditure of unnecessary time and money. It was not until the eve of our 271 hearings that Mid-Maine's amendment problem was resolved.

[3] Mid-Maine Dec. at ¶¶ 25-38.

In addition, during the hearings there was testimony concerning Verizon's requirement that CLECs update sections of their interconnection agreements unrelated to the section(s) that were the subject of the proposed amendment.[4] CLECs felt that they were being forced into accepting unfavorable or unnecessary terms in order to get new terms required by regulatory orders such as the FCC's *UNE Remand Order*.[5] Thus, Mid-Maine asserts that Verizon made the interconnection agreement amendment process more difficult than necessary, if not impossible for CLECs.

Verizon. While Verizon acknowledges that improvements in communications with Mid-Maine could be made, it states that Mid-Maine must shoulder a portion of the responsibility for the protracted negotiations. According to Verizon, at several junctures Mid-Maine failed to follow procedures that would have avoided the unnecessary "fits and starts" in its negotiations with Verizon and produced the amendment language that it wanted. Verizon asserts that other CLECs have succeeded in this process, mostly by following well-accepted procedures.

b. MPUC Findings

Unlike some other states, Verizon does not have a Statement of Generally Available Terms (SGAT) or wholesale tariff for the State of Maine. Availability of a wholesale tariff would greatly reduce the time required to effect a valid contract and would also eliminate the possibility of "tying"

[4] Tr. 1/29/02 at 36 (Ver. App. B, Vol. 8, Tab 17).

[5] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (rel. November 5, 1999) (*UNE Remand Order*).

unrelated sections of an interconnection agreement together when trying to add new terms to an existing agreement. Thus, at our request, Verizon has agreed to file a wholesale tariff for our review by October 1, 2002.[6] This will provide us an opportunity to review all of the terms and conditions that Verizon imposes on CLECs purchasing wholesale services.

In the meantime, to avoid additional instances of "tying" of interconnection amendments, Verizon will allow a CLEC to negotiate the terms and conditions related to a single UNE rather than be required to sign a multi-part or omnibus amendment.[7] Given these changes in policy by Verizon and its commitment to file a tariff, we find Verizon in compliance with Checklist Item No. 1 as it relates to interconnection agreements.

3. Collocation – Billing Issues Relating to Returned Cages

a. Positions of the Parties

CTC. CTC alleges that Verizon's practices for terminating collocation space arrangements and related billing fails to comply with Verizon's tariffs, the TelAct and Checklist Item 1. As explained in its Declaration, CTC initiated discussions with Verizon in April 2000 to terminate many of its collocation arrangements in New England. CTC contends that despite its good faith efforts to resolve the matter, Verizon has improperly continued to demand payment for non-recurring charges related to the collocation arrangements that were never turned over to CTC. Moreover, CTC

[6] *See* MPUC letter of March 1, 2002 and Verizon letter of March 4, 2002. (Ver. App. B, Vol. 8, Tabs 25, 26.)

[7] Id.

claims that Verizon has assessed monthly recurring charges for these arrangements, in some cases even beyond the date that it agreed to cease billing for such charges.

Verizon. Verizon claims that none of the collocation arrangements referenced by CTC are located in Maine.[8] Further, it claims that no other CLEC in Maine expressed concern regarding this issue and thus, there is no basis for any suggestion by CTC that Verizon's collocation policies and procedures in Maine have adversely affected CTC's business or in any way interfered with its ability to secure timely access to collocation arrangements from Verizon.

b. MPUC Findings

While there was no lack of details submitted by both CTC and Verizon to explain and support their positions regarding Verizon's billing for collocation cages that were returned by CTC to Verizon, the most relevant fact is that none of these alleged billings for returned cages occurred in Maine. Furthermore, no other CLEC indicated that this was a problem in Maine. Thus, we see no need for us to act at this time on CTC's allegations and leave for the FCC to determine whether there has been a violation of Verizon's federally filed tariff.

[8] *See* Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at 34; Tr. 1/29/02 at 45 (Ver. App. B, Vol. 8, Tab 17).

4. Collocation Issues Relating to DC Power Billing

a. Positions of the Parties

CLEC Coalition. Mid-Maine and Rennet allege that they were substantially overcharged for collocation power costs and that the charges did not conform to the ordering form provided when entering into collocation agreements with Verizon.[9]

Verizon. Verizon asserts that it provided DC power in accordance with the terms and conditions of its approved tariffs – PUC ME Tariff No. 20 and FCC Tariff No. 11 – and that Verizon's collocation practices and procedures have been implemented in compliance with Verizon's Checklist 1 obligations.[10]

b. MPUC Findings

At the hearings, the CLEC Coalition acknowledged that in light of the satisfactory resolution of these issues, a finding that Verizon has complied with Checklist Item 1 might be warranted, provided that there was a process in place to address such issues in the future in a timely fashion.[11] Given our decision (described in Section V.E.) to adopt the Rapid Response Process, we find that no further action is warranted at this time.

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[9] Mid-Maine Dec. at 5-10; RevNet Dec. at 4-19.

[10] *See* Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec). Verizon claims that it has investigated the specific billing claims raised by these CLECs and that they have been resolved. Tr. 1/29/02 at 32 (Ver. App. B, Vol. 8, Tab 17) .

[11] Tr. 1/29/02 at 38-39.

5. Collocation Process

a. Positions of the Parties

CLECs. At the hearings and in their written submissions, the CLECs pointed out that Verizon requires CLECs to complete the 76-day collocation cycle before Verizon will accept orders for trunks and other products/services, e.g., dark fiber.[12] The CLECs claim that this practice unnecessarily increases the uncertainty for the CLEC because the availability of desired facilities may be different at the end of the 76-day collocation cycle.[13] If the only reason for the CLEC's decision to collocate in a particular office is to be able to order specific facilities, Verizon's practice forces the CLECs to risk having a collocation cage that is unusable (at least in the short term) because there are no facilities available to connect to the collocation cage.

Verizon. Verizon claims that the primary reason for its policy is to ensure that Verizon would not have facilities tied up by CLEC reservations for future use and not be able to provide facilities to those having an immediate need for the same facilities. It is also concerned that allowing CLECs to reserve facilities would result in overbuilding and increased costs to Verizon if the CLEC canceled its reservation.

b. MPUC Findings

Our Staff discussed this issue with all parties and have determined that the most immediate and frequent problem with the serial nature of Verizon's collocation process related to ordering dark fiber. Verizon

[12] Id. at 226.

[13] Id. at 227.

disclosed that it has a trial process in place in Pennsylvania that allows a CLEC to order dark fiber on approximately the 10th day of the collocation process, rather than the 66th day. Verizon anticipates that it will begin rollout of this new procedure in 6 to 9 months. Thus, we conditioned our support of Verizon's 271 application on Verizon's agreement to provide us with a 6-month update on the trial and its pledge to implement this procedure in Maine as soon as possible. Verizon has agreed to this condition, and we anticipate that this new process will be implemented before the end of the year.[14]

With regard to the problems associated with Verizon's process for collocation and for ordering interoffice facilities, we intend to continue to work with Verizon and the CLECs to determine whether a more efficient process is possible. We do not believe, however, that this issue warrants rejection of Verizon's 271 application and, given the modifications discussed above, we find that Verizon meets the requirements of Checklist Item 1.

C. Checklist Item No. 2: Non-discriminatory Access to Network Elements and OSS

1. Applicable Law – Nondiscriminatory Access

Section 271(c)(2)(B)(ii) of the TelAct requires that Verizon provide "non-discriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) provides that an incumbent LEC "shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to

[14] *See* MPUC letter of March 1, 2002 and Verizon letter of March 4, 2002. (Ver. App. B, Vol. 8, Tabs 25, 26.)

provide such telecommunication service." Section 252(d)(1) requires that state commission-determined rates for UNEs be based on the cost of providing the network elements and may include a reasonable profit. The FCC requires that UNE rates be based on the total element long run incremental cost ("TELRIC") of providing those elements.

2. New EELs

One of the issues raised concerning Verizon's compliance with this Checklist item relates to Verizon's provision of so-called "new" EELs (enhanced extended loops). EELs, which are combinations of loop and interoffice facilities, have become an important means of providing local exchange service for CLECs. New EELs are those that do not currently exist in Verizon's network, i.e., are not associated with a specific end user.

a. Positions of the Parties

Mid-Maine and RevNet. Mid-Maine and RevNet criticized Verizon's policy of refusing to provision new EELs. Mid-Maine argues that Verizon is unwilling to provide new EELs because they would improve a CLEC's operational efficiency and thus believes Verizon's policy is a barrier to entry.[15] While Mid-Maine acknowledges that Verizon will later convert a special access arrangement to a UNE EEL arrangement upon request, Mid-Maine is concerned about the potential for disrupting customer service during the conversion.[16] RevNet also disputes Verizon's policy of requiring that EELs have

[15] Mid-Maine Dec. at ¶ 43.

[16] Id.

a percentage of voice traffic run over the circuit in order to qualify for UNE provisioning.[17]

AT&T. AT&T points out that Verizon has not filed a Statement of Generally Available Terms and Conditions ("SGAT") or wholesale tariff in Maine and argues that Verizon, therefore, has no legal obligation in Maine to provide UNEs or interconnection arrangements to any CLEC, unless the CLEC has already negotiated an interconnection agreement. AT&T argues that the mere fact that Verizon has voluntarily provided UNE combinations in the past does not constitute a legal obligation to provide them in the future, and it is the legal obligation that is necessary for Section 271 standards.

Verizon. Verizon argues that under the FCC's *UNE Remand Order*, *Supplemental Order*, and *Clarification Order,*[18] it is not required to provide new EELs.

b. MPUC Findings

During the course of our investigation, we learned that Verizon was already providing new EELs in several other states pursuant to state commission orders.[19] Thus, in our March 1, 2002 letter to Verizon, we conditioned our endorsement of Verizon's 271 application on the provision of

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[17] RevNet Dec. at 11.

[18] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (rel. November 5, 1999) (*UNE Remand Order*); Supplemental Order, 15 FCC Rcd 1761 (*Supplemental Order*) (rel. November 24, 1999); Supplemental Order Clarification, 15 FCC Rcd 9587 (*Clarification Order*), released June 2, 2000.

[19] Tr. 1/29/02 at 293 (Ver. App. B, Vol. 8, Tab 17).

new EELs in Maine beginning in April, 2002.[20] In its March 4, 2002 reply letter, Verizon stated that it would meet the Commission's condition and provide new EELs in Maine.[21] Thus, we find this issue has been resolved to our satisfaction.

3. Quality of Service - OSS

During the course of our proceeding, a number of carriers raised issues concerning their difficulty in effectively using Verizon's OSS as well as the lack of training or willingness of Verizon personnel to resolve CLEC-Verizon operational issues. These parties allege that Verizon's indifference and incompetence place CLECs at a competitive disadvantage and indicate that Verizon has not met the requirements of Checklist Item No. 2.

a. Positions of the Parties

Mid-Maine. Mid-Maine alleges that the quality of service that Verizon provides Mid-Maine is "woefully inadequate."[22] Mid-Maine claims Verizon's representatives: (a) "consistently reject or erroneously provision orders that Mid-Maine has entered in Verizon systems;" (b) follow provisioning processes that "are generally inefficient and do not allow for a smooth order flow through on a consistent basis;" and (c) "either lack of [*sic*] experience or preparation, or even worse, are uncaring and unresponsive."[23] Mid-Maine provided three specific examples of the types of problems it has encountered:

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[20] Ver. App. B, Vol. 8, Tab. 25 (MPUC March 1, 2002 letter).

[21] Id. at Tab 26 (Verizon March 4, 2002 letter).

[22] Mid-Maine Dec. at ¶ 58.

[23] Id.

(1) Verizon's failure to adequately handle CLEC to CLEC migration issues as exemplified in the Maine Medical Assessment matter;[24]

(2) Verizon's failure to adequately migrate a CLEC customer from one location to another as exemplified in the Cote Brothers matter;[25] and

(3) Verizon's failure to institute Local Number Portability in a reasonable and timely manner as exemplified in the Pioneer Plastics matter.[26]

Mid-Maine also raised concerns regarding Verizon's failure to provide timely and accurate wholesale bills as exemplified in Verizon's failure to comply with de-averaged billing as required by Mid-Maine's interconnection agreement.[27]

ASCENT. ASCENT argues that during the course of this proceeding "…a pattern of continued Verizon non-compliance has emerged."[28] ASCENT asserts that:

> [C]ompetitors that currently serve the local market continue to experience severe operational impediments directly attributed to Verizon's discriminatory and anti-competitive policies. These operational impediments, documented throughout this proceeding, undermine the ability of competing companies to serve their subscribers at parity with the manner in which Verizon serves its own customers. When Verizon's veneer of compliance is stripped away, its purported compliance and promises do not translate into meaningful *local* competition – the type

[24] Id. at ¶¶ 59-65

[25] Id. at ¶¶ 66-84

[26] Id. at ¶¶ 85-94.

[27] Id. at ¶¶ 97-99.

[28] ASCENT Br. at 1.

> of meaningful competition Verizon alleges its entry into the interLATA market will promote.[29]

ASCENT further asserts that the fact "[t]hat all current Maine CLECs continue to experience significant operational problems, and few new CLECs are considering local market entry in the State, reveals a pattern of serious operational and pricing impediments caused by Verizon's discriminatory tactics."[30] As evidence of these tactics, ASCENT points to Verizon's restrictive resale policies, such as those governing contract service arrangement resale restrictions[31] and to the fact that "Verizon's evidence completely fails to demonstrate that it is providing, or is even capable of providing, line shared, split line, and DSL capable loops at commercial volumes."[32]

AT&T. While AT&T also raised the issue of the provisioning of non-discriminatory access, AT&T's focus was on what AT&T believes is the failure of Verizon's post-entry Performance Assurance Plan (PAP).[33] We will address this issue in Section V.D.

Verizon. Verizon claims that it has conducted an "exhaustive root cause analysis" of the three examples cited by Mid-Maine and found that "both Mid-Maine and Verizon share some responsibility for various problems experienced by Mid-Maine." Verizon claims that some of the problems could have been avoided if Mid-Maine had "followed applicable ordering

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[29] Id. at 3.

[30] Id. at 4.

[31] Id. at 7.

[32] Id. at 17.

procedures" which are available to all CLECs.[34] Verizon argues that Mid-Maine's allegations do not warrant a finding of non-compliance with the Checklist and cites to FCC's findings that Verizon's training "provides efficient competitors a meaningful opportunity to compete."[35]

While admitting that the existing communication channels between Mid-Maine and Verizon did not provide timely resolution to Mid-Maine's problems, Verizon claims that each of the problems Mid-Maine cites was handled expeditiously once the appropriate personnel were notified.[36] Verizon points to its meeting with Mid-Maine to discuss operational issues and review inter-company procedures as reflective of its effort to develop and implement plans to prevent similar problems from occurring in the future. Verizon also points to Lightship's declaration which stated that it had received meaningful responses from Verizon and escalation when necessary.[37]

Verizon further argues that the claims Mid-Maine raised were "nothing more than inter-carrier disputes over minor or isolated operational problems" which the FCC has repeatedly stated are not the proper subject of a 271 proceeding.[38] Verizon argues that the Mid-Maine incidents are isolated and do not accurately depict its "overall strong performance in provisioning and maintaining UNE loops." It claims that the C2C data for Mid-

[34] Ver. Br. at 31-32 (Ver. App. Vol. 8, Tab 24).

[35] Id.

[36] Id.

[37] Id.

[38] Id.

Maine supports a finding that Verizon generally provides "good" service to Mid-Maine and that there is no indication of "patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete."[39] Thus, Verizon asserts that when examining "the totality of the circumstances in evaluating Verizon's performance in providing loops in accordance with the checklist requirements," it is clear that Verizon provides good service on the vast majority of unbundled loops in Maine and thus has satisfied its Checklist Item 4 obligations.

b. MPUC Findings

We have carefully reviewed the allegations made by Mid-Maine. Staff has first-hand knowledge of several of the incidents because they were called upon to assist Mid-Maine in resolving the complaints. We find that Verizon was the cause of much of the confusion, delay, and increased expense associated with each of these incidents. However, our finding does not necessitate a finding that Verizon does not comply with this Checklist Item.

The FCC has determined that the performance measures in the C2C Guidelines, not individual incidents, provide the most "probative evidence that a BOC is providing nondiscriminatory access" to its wholesale products.[40] No party has argued that this data shows a problem with Verizon's overall performance on UNE loop provisioning for CLECs in Maine.[41]

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[39] Id.

[40] Ver. Br. at 32 *citing Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, (1999) (*NY Approval Order)*, at ¶¶ 53-54.

We expect that individual problems will continue to occur given the complex nature of the business and Verizon's size and structure. We also expect, however, that the problems will be less frequent and that Verizon's overall wholesale performance in Maine will continue to improve. We believe that the meetings our Staff have held with the CLECs (including Mid-Maine) and Verizon over the last year have helped direct Verizon's attention to important operational and support issues affecting Maine CLECs. The level of attention given to Maine CLEC issues has risen considerably since these meetings began and since high-level Verizon personnel have participated in the resolution of issues.

We believe that the Rapid Response Process we adopt today will facilitate the speedy resolution of problems such as those encountered by Mid-Maine as well as alert us to any areas where Verizon's wholesale performance has slipped below an acceptable standard. Having said that, we are mindful of the fact that a continuous stream of small issues which do not require major policy or personnel changes can have the same detrimental impact on a CLEC as a few large issues which generate a much larger and immediate reaction. Thus, we intend to scrutinize Verizon's wholesale operations by: (1) continuing our CLEC/Verizon meetings; (2) monitoring the frequency and types of complaints being filed through the Rapid Response Process; and (3) reviewing the monthly PAP and C2C wholesale service reports.

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[41] *See also* Ver. App. B. Vol. 2a-f, Tab 3 (Checklist Dec.) at ¶¶ 132-165, 196-200; Ver. App. B, Vol. 7, Tab 15 (Checklist Update) at ¶¶ 5-9; Ver. App. I, Vol. 1, Tab 5 (Ver. C2C Reports).

4. UNE Pricing

a. Positions of the Parties

AT&T. In its February 15, 2002 Comments, AT&T alleges that if a benchmark analysis of Verizon's Maine unbundled switching rates were conducted, consistent with the FCC's approach in evaluation of Verizon's Pennsylvania 271 application, it would show that Maine's rates were excessive and not TELRIC compliant. AT&T alleged that Verizon's unbundled switching rates translated into monthly charges that were 19% higher than the cost-adjusted rates resulting from the recent New York Public Service Commission order regarding UNE rates.[42]

AT&T also alleges that Verizon's UNE rates are so high that they preclude economic entry into the local exchange market. Specifically, AT&T alleges that those rates bring about a price squeeze that prevents UNE-based competitors from earning sufficient margins to provide local service economically in competition with Verizon, by imposing wholesale costs on Verizon's competitors that render it impossible for them to offer a retail service that would be price competitive.[43] AT&T claims that Maine's TELRIC rates are "highly inflated" and preclude the development of competition in the residential marketplace.[44] AT&T provided an analysis which compared the costs associated with a residential UNE-Platform offering in Maine with the revenues that are

[42] AT&T Br. at 5.

[43] Id. at 7.

[44] Id.

available to carriers serving such customers in Maine and claims that the analysis shows that competitive carriers cannot offer profitable UNE-Platform-based services in Maine at the rates contained in Verizon's application.

AT&T claims that Maine's TELRIC rates violate the Section 271 Checklist because they foreclose broad-based local competition. AT&T also claims its evidence of a price squeeze makes approving a Verizon Section 271 application for Maine inconsistent with the public interest. AT&T argues that the existence of a price squeeze that would foreclose efficient local entry into the residential market obviously constitutes a "relevant factor" under the FCC's public interest analysis.[45] AT&T further argues that despite the FCC's past lack of interest in price squeeze arguments, the recent decision in the *Sprint v. FCC* case requires the FCC to more seriously consider such arguments.[46] Specifically, AT&T argues that under *Sprint*, when evidence is presented in a Section 271 proceeding that UNE-based residential competition is economically infeasible, the FCC cannot grant the application without evaluating and addressing that evidence. Thus, AT&T urges us to conduct such an analysis and not to support Verizon's application.

WorldCom. WorldCom argues that us should not support Verizon's 271 application until Verizon reduces its UNE rates to "more nearly reflect TELRIC and to eliminate the price squeeze imposed on competitors."[47]

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[45]AT&T Br. at 8.

[46]*Sprint* v. *FCC*, 2001 U.S. App. LEXIS 27292 (D.C. Cir. 2001).

[47]WorldCom Br. at 4.

WorldCom's assertion that Verizon's current UNE rates will result in a price squeeze relies in its entirety upon the analysis provided by AT&T, which WorldCom claims "…demonstrates that a comparison of the UNE rates in Maine with Verizon's retail rates illustrates that Verizon's UNE rates will impose a significant price squeeze on prospective competitors."[48] To eliminate this potential price squeeze situation, WorldCom urges the Commission to reduce Verizon's UNE rates in Maine so as to achieve irreversible competition in Maine, a prerequisite which WorldCom believes is necessary for the finding of 271 compliance.[49]

b. MPUC Findings

AT&T's allegations that Maine's switching rates were 28% higher than those recently adopted in New York prompted us to review the way we had established switching rates in our TELRIC proceeding. In the course of our review, we discovered a calculation error and corrected it in our March 8, 2002 TELRIC Order. In our Order we determined that, while no finding could be made that "…Maine switching rates must bear a specific relationship to New York's rates, we note that the new 24-hour rate we adopt today results in a total switching cost per month which is within 2% of the New York rates."[50] We

[48]Id.

[49]Id. at 4-5.

[50]*In the Matter of Investigation Total Elemental Long Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements*, Docket No. 97-505, Order at 3 (March 8, 2002).

believe that this finding satisfactorily addresses AT&T's concern on switching rates and so consider the matter settled.

With regard to the price squeeze allegation by AT&T and WorldCom, we have examined the evidence supplied by AT&T and have found it wanting. AT&T's price squeeze argument in this docket is essentially the same as it made in the TELRIC docket. In that docket, as in this, AT&T alleged "…that efficient UNE-based entry in Maine has been effectively foreclosed." AT&T's assertions rest on the analysis contained in its Exhibit 1, filed as an attachment to AT&T's *Initial Brief on Exceptions* [51] in the TELRIC case, the results of which are displayed again here in AT&T's *Comments* at pages 5-6. This analysis has several severe infirmities that cast considerable doubt on AT&T's conclusions.

First, AT&T provides no description or guidance as to how its Exhibit 1 costs were developed. In fact, some of these costs appear to be erroneous in that they are not tied to the Hearing Examiner's recommended rates or the Commission's final rates. For example, AT&T's Exhibit 1 utilizes *Features and DUF Costs* of approximately $2.18 in its cost calculations. However, the monthly recurring rates we adopted for feature prices are zero for all line port features.[52] AT&T provides us with no guidance on how its $2.18 cost was derived, thus making it impossible to ascertain the reasonableness of its

[51] *In the Matter of Investigation of Total element Long-Run Incremental Costs (TELRIC) Studies and Pricing of Unbundled Network Elements*, Docket No. 97-505, AT&T's Initial Brief on Exceptions to the January 18, 2002 Recommended Decision (Brief on Exceptions) at 12.

[52] *March 20, 2002 TELRIC Order at Rate Summary Sheet UNE Section*, at 17-21. It should also be noted that AT&T provided the MPUC with no definition of DUF, nor a cite to where costs for such a service, or services, could be found in either the *Recommended Decision* or the *Rate Summary Sheet* attached to that decision.

assumptions. Similarly, AT&T utilizes a value of $5.94 as the monthly recurring usage rate, but does not illustrate how this rate was derived.

AT&T also provides no support for the revenue numbers contained in its analysis, which makes it impossible to determine if AT&T's revenue projections are reasonable. For example, we cannot ascertain if AT&T's revenue projections assumed revenue from xDSL service, though it appears that they did not, nor is it possible to determine if AT&T's projections from vertical features are reasonable as no detailed support was provided for these projections.

AT&T's assumes that a "…CLEC can also expect to incur at least $10 per line per month in internal costs."[53] This value is not part of the record of either the 271 or TELRIC case, having been introduced for the first time in AT&T's TELRIC *Brief on Exceptions* and now appearing again in AT&T's *Comments* filed in the 271 proceeding. In introducing this value at this point in the proceedings, AT&T is effectively asking us to set aside the extensive record that has already been developed concerning the cost of providing UNEs and set rates based on an unsubstantiated assertion by WorldCom in another docket in another state that its retail cost is $10. This is not an action we will take.

Finally, AT&T's analysis is also defective for what was not considered. For example, AT&T's analysis did not consider the existence of resale as an option for certain service classes that do not lend themselves to economical competition through the use of UNEs. Nor did AT&T's analysis

[53] AT&T Br. at 5.

consider the fact that use of the UNE platform will likely reduce customer churn and, therefore, CLECs' costs. Finally, AT&T did not consider the cross-elastic effects of providing local residential service through UNEs on its long-distance products.

AT&T argued that even if the "…recommended rates for Maine satisfied TELRIC, those rates would still be discriminatory, and unlawful under Section 251(c)(3), because they foreclose competition in precisely the manner described in *Conway*."[54] This is simply not the case. For example, assume that WorldCom's cost of $10 is the correct retail cost for WorldCom and that the retail cost for Verizon is $5. Furthermore, assume that the wholesale cost for both parties is $20. Finally, assume that Verizon's retail price offering is $25. Under these assumptions, there is a price squeeze because it costs WorldCom $30 to provide service ($20 wholesale + $10 retail) and $30 is greater than Verizon's retail price of $25.

One way to remedy this situation would be to increase retail prices to $30 and compel customers to subsidize the inefficient (relative to Verizon) operations of Worldcom. On the other hand, if the wholesale price were reduced to $15, the price would fall below the $20 cost of providing wholesale service, thereby forcing Verizon to subsidize Worldcom's comparatively inefficient operations. In a situation such as this, even though a price squeeze is occurring, no regulatory relief is warranted because the squeeze is an artifact of one company's inefficient operations and not a result of the

[54] Id. at 10.

predatory and discriminatory pricing practices that the *Conway* decision was addressing.

Under a different set of assumptions, a price squeeze of the type addressed by the *Conway* could occur. For example, suppose that WorldCom and Verizon both had retail costs of $10 and wholesale costs of $15. Furthermore, assume that the retail price was again set at $25 and the wholesale price was established at $20. WorldCom's total cost per line would once again be $30, which is greater than the retail price of $25. Verizon, on the other hand, would have a wholesale cost of $15 and a retail cost of $10 and would therefore break-even. In this second scenario, WorldCom would be squeezed out of the market because the price of the wholesale service, $20, exceeds the economic cost of providing that service, $15. This is the classic price squeeze scenario for which regulatory relief is warranted and at which the *Conway* decision was directed. AT&T has made no showing that this second scenario exists here.[55]

AT&T's reliance on the *Conway* decision is also misplaced given the circumstances of these proceedings. Unlike the situation in the *Conway* case, AT&T was afforded ample opportunity during the course of our TELRIC proceeding to present evidence that Verizon's proposed prices would lead to a price squeeze. Since AT&T chose not to avail itself of that opportunity, not even to the extent of suggesting prices we would have to establish so as to avoid the possibility of a price squeeze, AT&T's current complaints cannot, and

[55]The cost figures in the hypothetical example presented here includes a return on investment.

should not, be attributed to any failing on the part of this Commission.[56] Furthermore, AT&T points to no area in our TELRIC Order where we have failed to fairly assign costs to the wholesale and retail operations of Verizon, another shortcoming the Court was seeking to redress in its *Conway* decision.[57]

AT&T also cites *NY, ME & H Railroad Co. v. ICC,* in support of its claim of a price squeeze.[58] In that case, there was extensive evidence before the court regarding the price and cost for the delivery of coal from West Virginia to New Haven, Connecticut. We have no similar record before us in this proceeding. During neither the TELRIC proceeding nor the 271 proceeding did AT&T present any evidence on this topic. AT&T's comments in both dockets highlight the need for a clear understanding of the retail costs associated with providing telephone service. No such evidence was presented by AT&T or any other party, including WorldCom. The only record evidence on a price squeeze cited by AT&T in its Initial or Reply Brief in the TELRIC proceeding is a response to a question from the Bench. The AT&T witness expressed his concern about a price squeeze but presented no data on what prices would have to be

[56]AT&T's *Initial Brief* at 53 in the TELRIC case states that: "If the changes to the 'inputs' discussed in Section III above are made, the output of Verizon's spreadsheet 'model' would produce better estimates of the cost of UNEs than those produced by Verizon. AT&T has not attempted to recalculate the UNE costs that Verizon's model would produce with realistic inputs and assumptions." AT&T never stated what it thought the price of the loop, the major cost component of the UNE platform, should be. Nor did it offer a suggested loop cost in its *Brief on Exceptions*, contenting itself with merely stating that the Commission got the number wrong, but providing no guidance as how to determine the "correct" number.

[57]*Conway* at 280 and fn. 6.

[58]200 U.S. 361, 390-91 (1905).

established to avoid it.[59] As we have pointed out in our discussion of AT&T's attachment to its exceptions, AT&T's non-record evidence in this proceeding is hardly compelling and therefore does not merit the weight given by the Court to the evidence considered in *NY, ME & H Railroad Co.* v. *ICC*.

Thus, we find that AT&T and WorldCom have failed to adequately substantiate their price squeeze allegations. We also find that the TELRIC rates we established are well within the "zone of reasonableness" and, indeed, are some of the lowest rates in the Northeast. Accordingly, based upon these findings as well as those in sections above, we find Verizon has met the requirements of Checklist Item No. 2.

D. Checklist Item No. 3: Poles, Ducts, Conduit, and Rights of Way

1. Applicable Law

Section 271(c)(2)(B)(iii) of the TelAct requires Verizon to offer "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [Verizon] at just and reasonable rates in accordance with the requirements of section 224." Section 224 of the TelAct sets forth the conditions under which a utility may deny access to its poles, ducts, conduits or rights-of-way. It also addresses the maximum rates that may be charged by Verizon for attachments to its poles.

2. Position of the Parties

RevNet. RevNet cites numerous instances that allegedly showed that Verizon had treated RevNet in a discriminatory manner in many of

[59] *See* AT&T Initial Br. at 52 citing Tr. 1/21/98 at 187-88 in the TELRIC case.

its requests for use of Verizon conduit and poles.[60] In addition, RevNet charges that Verizon has not followed its own manuals regarding "project basis" work, Verizon was unable to provide a requested plat *via* established procedures, and Verizon stopped communicating with RevNet personnel unless an attorney were present after RevNet filed a complaint with the Commission.[61] These allegedly discriminatory actions by Verizon increased RevNet's cost and made it more difficult for it to provide service on a timely basis.

According to RevNet, Verizon did allow RevNet access to conduit, only on a "temporary basis." RevNet claims that this needlessly increased uncertainty and demonstrates the unfair bargaining position of the CLECs in relation to Verizon.

CLEC Coalition. In its brief, the CLEC Coalition recommended that Verizon implement the following process: if a CLEC pays to have conduit or innerduct installed and additional space is made available as a result, Verizon must notify the CLEC when any other party, including Verizon or any other LEC, uses the additional space created by the conduit or innerduct installation.[62] During the hearings, Verizon acknowledged that a CLEC that pays for space it does not use should be entitled to reimbursement from a subsequent

[60]RevNet Dec. at ¶ 50-58.

[61]Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at ¶ 70.

[62]CLEC Coalition Br. at 8.

user of that space.[63] However, only Verizon has access to the information indicating whether and when a new user begins using the space.

Verizon. Verizon notes that only one party, RevNet, addressed the issue of access to Verizon's poles and conduits. Verizon argues that RevNet's claims are misleading, unfounded and, in part, based on its own confusion about the license application process Verizon conducts successfully with other licensees in Maine.[64] Verizon also points out that all of RevNet's pending license requests in Maine have been granted and/or completed and that there are no outstanding disputes.[65]

Verizon also claims that RevNet's experiences are attributable to RevNet's inexperience with Verizon's processes. Verizon points to RevNet's claim that Verizon never offered RevNet the opportunity to have its license applications handled on a "project basis" as proof of its point.[66] Verizon maintains that it explained the project basis process several times to RevNet's personnel at several project meetings.[67] Verizon also points to RevNet's mistaken belief that it could not apply for the conduit associated with "manhole zero" outside a Verizon central office until it had completed the collocation process within the office.[68] Verizon claims that manhole zero assignments are

[63] Tr. 1/30/02 at 56 (Ver. App. B, Vol. 8, Tab 20).

[64] Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at 66 .

[65] Id.

[66] Id. at ¶ 78.

[67] Id. at 67, 78.

[68] *See* Tr. 1/30/02 at 65, 85 (Ver. App. B, Vol. 8, Tab 20).

typically provided to the CLEC within the first 10 business days following the collocation application, not at the end of the collocation construction process as RevNet incorrectly assumed.[69]

With regard to the claims of RevNet and the CLEC Coalition regarding repayment of make-ready work, Verizon states that its policy is fully consistent with the terms of its standard license agreements and applicable FCC Orders.[70] Further, during the hearings Verizon explained that to prepare a vacant 4-inch conduit for a licensee's use, Verizon must place innerduct as a raceway for the licensee's cable.[71] Typically, Verizon will pull through three separate 1.5-inch innerducts within the 4-inch duct even where the licensee only needs one innerduct, because the labor of simultaneous placement costs are not significant, nor are the incremental material costs. By contrast, if Verizon had to return to the duct at a later time to make space available for a subsequent licensee, the labor to pull through an additional innerduct would be far greater and could damage the existing innerduct and licensee cable.[72]

Verizon states that it is sound engineering and construction practice to place all three innerducts within the duct simultaneously with the first make-ready request. This practice also makes Verizon's infrastructure available to the largest number of potential licensees. The incremental costs of this sound

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[69] Id. at 66-67.

[70] Id. at 58.

[71] Id. at 59.

[72] Id. at 77.

policy to the first licensee are truly *de minimis*, and RevNet has a chance, over time, of benefiting from this practice should it be the "new user" of the conduit.[73]

3. MPUC Findings

In its brief, Verizon provided updated data regarding access to its poles, ducts, and conduits. This information, along with Verizon's declarations and testimony, indicate that parties are utilizing large numbers of Verizon's poles and conduits in Maine. We agree with Verizon that if there were serious problems with this item, we would likely have heard from a larger number of carriers. With regard to RevNet's experiences over the last year, we find that RevNet did appear to make some assumptions about Verizon's processes which proved inaccurate. We also find that many of the particular problems were related to RevNet's need to get conduit over the I-95 bridge between Kittery, Maine and Portsmouth, New Hampshire and that this particular set of problems has been resolved. Indeed, RevNet filed a formal complaint with the Commission on September 6. 2001, but the parties resolved their dispute without the need for formal Commission action.

With regard to the potential for future problems, RevNet has agreed to participate in the regular conduit workshops held by Verizon. We believe that these workshops may assist RevNet with Verizon's licensing and conduit policies. If specific problems arise in the future, our Rapid Response Process (described in Section V.E. below) will provide for a speedy resolution.

[73] Id. at 60.

As for the proposal outlined by the CLEC Coalition regarding make-ready costs paid by one CLEC that could benefit other CLECs in the future, we find that while the proposal has intuitive appeal and is similar to the process used to share construction costs for line extensions, it is not appropriate to adopt at this time. We are concerned that the overall benefits will be outweighed by increased administrative and other costs. Since the initial conduit user will still have to pay almost all of the construction costs, we find, at this time, the benefits have not been shown to outweigh the costs.

When we consider the all of the evidence, we find that Verizon is in compliance with Checklist Item No. 3.

E. Checklist Item No. 4: Local Loop

Section 271(c)(2)(B)(iv) of the TelAct requires a RBOC to provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." The FCC has defined a loop as a transmission facility between a distribution frame, or its equivalent, in an ILEC central office, and the demarcation point at the customer's premises.[74] Furthermore, the FCC has indicated that Verizon "has an obligation to provision 'two wire and four-wire analog voice-grade loops, and two-wire and four-wire

[74] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990 *(Massachusetts Order*) at ¶ 121, n. 393.

loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.'"[75]

To comply with the requirements of this Checklist item, Verizon must show that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that CLECs demand and at an acceptable level of quality.[76] In addition, access to the loop must be nondiscriminatory, and since the ordering and provisioning of network elements has no retail analogue, the FCC will look at whether Verizon's performance offers an efficient CLEC a meaningful opportunity to compete.[77]

In our proceeding, two specific issues were raised regarding Verizon's compliance with Checklist Item No. 4: lack of competition for DSL loops and Verizon's policy of refusing to provide UNEs when it determines that "no facilities are available."

1. DSL Loops.

a. Position of the Parties

OPA. The OPA claims that the small numbers of local loops actually used by competitors in Maine suggest that Verizon's pricing and other policies are impeding competition. More specifically, the OPA has concerns regarding the openness of the market for DLS loops in Maine. The

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[75] Id. at ¶ 121 (citations omitted).

[76] *Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000) (*Texas Order*) at ¶ 247.

[77] *New York Order* at ¶ 269.

OPA points to Verizon's response to PA-1-53 (in evidence as Public Advocate 6) to show that the number of DSL loops actually in use by non-Verizon companies is small compared with those provided through Verizon Advanced Data Incorporated (VADI). During the pendency of our 271 proceeding, VADI's assets were transferred back to the books of Verizon which means that all DSL loops formerly served by VADI are now served directly by Verizon.[78] Furthermore, the largest of the non-Verizon CLECs providing DSL service is no longer in business.[79] The OPA maintains that competition for DSL is actually declining in Maine to the benefit of Verizon due to competitive barriers, such as excessive DSL rates imposed on CLECs by Verizon. Indeed, according to the OPA, the growth in Verizon DSL loops each month has exceeded the total number of DSL loops held by any single non-Verizon competitor.[80]

Verizon. Verizon argues that the *Sprint* court found that "market share" is totally irrelevant to the determination of checklist compliance.[81] Verizon claims this holding is consistent with the position of the FCC that Congress did not intend a market share evaluation to become the test for whether the market was open to competition.[82]

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[78] Verizon-ME New England, Inc. d/b/a Verizon-Maine, Verizon-ME Advanced Data, Inc., Request for Approval of Affiliated Interest Transaction and Transfer of Assets to Return Advanced Service Assets From Verizon-ME Advanced Data, Inc. to Verizon-Maine and for Verizon-ME Advanced Data, Inc. to Abandon Services Under Section 1104, Docket No. 2001-785, Order (MPUC Feb. 5, 2002).

[79] 1/30/02 Tr. 10 (Ver. App. B, Vol. 8, Tab 20).

[80] Id.

[81] Ver. Br. at 95.

[82] Id.

b. MPUC Findings

We have just recently issued our TELRIC Orders which substantially reduce the prices for loops. We expect that this will spur additional competition in Maine, including in the provision of DSL services. The OPA's position was not supported with sufficiently detailed analysis to allow us to assess its likely merit with our new prices in place. We are unwilling to lower prices any further without first observing the impact of our new TELRIC rates on the market. The OPA's concerns regarding the reintegration of VADI back into Verizon are well founded and will warrant our continued monitoring of the situation to ensure that no discrimination from a pricing, service or costing perspective occurs.

2. "No facilitities available" Issue

a. Positions of the Parties

RevNet and Mid-Maine. In its Declaration, RevNet noted that Verizon had rejected several requests by RevNet for high-capacity loops and transport based on Verizon's claim that no facilities existed.[83] RevNet believes that Verizon's new "no facilities" policy is unlawful and demonstrates that Verizon has not met its Checklist obligations in Maine. RevNet further argues that Verizon's "no facilities available" policy reflects a larger Verizon policy goal to relegate UNEs to separate and inferior networks.[84] According to RevNet, Verizon and other ILECs increasingly appear to be seeking

[83]RevNet Dec. at ¶ 21.

[84]RevNet Dec. at ¶ 22.

establishment of separate network facilities for UNEs and special access.

RevNet asserts that Verizon has adopted a new policy that uses a far more restrictive definition of availability for DS-1 and DS-3 facilities. Significantly, under Verizon's new policy, the term "facility" has been broadened to include not only the loop, but also the electronics required to condition the loop to meet DS-1 or DS-3 specifications.[85] In addition, Verizon will only provide unbundled DS-1 or DS-3 loops when all the equipment necessary to provide such loops is already in place, including equipment at the customer location. This effectively restricts the ability of CLECs to get DS-1 and DS-3 loops to locations where the customer either has DS-1 or DS-3 service, or had DS-1 or DS-3 service and all the necessary equipment is still in place.[86] RevNet claims that any CLEC customer seeking new DS-1 or DS-3 service is at the mercy of Verizon to decide whether facilities are available, which puts CLECs at risk of losing customers on a regular basis.

RevNet argues that any claim by Verizon that it is not implementing a new policy is patently false, as evidenced by the fact that most CLECs have experienced an increased number of "no facilities available" responses for orders over the past six months and because many of the rejected orders are similar to orders Verizon previously provisioned.[87] RevNet claims that

[85]RevNet Dec. at ¶ 23.

[86]Id.

[87]Id. at 24.

the pattern of activity shows an increasingly obstructionist attitude towards local competition in Maine.[88]

RevNet asserts that Verizon's legal obligations are unequivocal and that when a CLEC requests a DS-1 or DS-3 loop the only relevant question is whether it is reasonably technically feasible to condition a loop to provide the DS-1 or DS-3 capabilities requested by the CLEC. If the answer to that question is yes, then Verizon must provision a DS-1 or DS-3 capable loop and provision the loop in a timeframe and manner that it would do for itself under similar circumstances.[89] Verizon's new policy, as described in a July 24, 2001 industry letter to CLECs, states that in some cases, at Verizon's discretion (i.e., when it has already begun construction for its own retail arm), Verizon will provide DS-1 facilities where "facilities are not available" under its new policy. Any such orders will have a longer than normal provisioning interval and must be ordered pursuant to a special access tariff at much higher prices.

RevNet claims that by forcing CLECs to purchase special access circuits, Verizon has unilaterally increased the cost of obtaining facilities. In addition, Verizon's policy has significantly increased the time required to obtain the facilities necessary to serve customers and made it impossible for RevNet to provide customers with date-certain service. In addition, RevNet asserts that Verizon has been unable to clearly outline the costs associated with a particular UNE special access order, and that RevNet has

[88]Id.

[89]Id. at 25.

been given several completely different answers and different prices by Verizon personnel, making it virtually impossible for RevNet to give its customer a firm quote for pricing the circuit.[90]

RevNet claims that Verizon's "no facilities" policy is blatantly discriminatory and designed to provide Verizon with an unfair advantage in the lucrative advanced services market by ensuring that it has adequate facilities for its own retail services, but none for provisioning of UNEs.[91] RevNet concludes that this undermines the FCC's fundamental unbundling policy of requiring access to UNEs in a manner that is non-discriminatory and within a timeframe that is consistent with the RBOC's provisioning of retail circuits for its own customers.

In its Declaration, Mid-Maine echoes many of the same arguments and complaints made by RevNet. Mid-Maine states that since Verizon's July 24, 2001 industry letter, Verizon has rejected an increasing number of requests for high-capacity loops and transport based on the premise that there are no facilities to provision such service without having to engage in construction. Mid-Maine claims that, prior to the industry letter, Mid-Maine did not have a single order cancelled due to facilities exhaust. Since the industry letter, Mid-Maine's rejection rate has increased almost 40%.[92]

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[90] Id. at ¶ 26.

[91] Id. at ¶ 28.

[92] Id. at ¶ 45.

Mid-Maine asserts that Verizon's policy has a significant impact on CLEC customer relations. Specifically, because Verizon's systems do not allow a CLEC to pre-check and reserve facilities to ensure the facility will be available when the customer is ready, the CLEC is left with two unattractive options. One is to cancel the order, notify the customer that it cannot provide services due to facility exhaust and risk losing the customer. More importantly, the CLEC risks that the customer will tell other potential CLEC customers that doing business with CLECs is risky since there is no way for them to guarantee that they can get access to the facilities needed to provide the services proposed to the customer. Mid-Maine claims that the potential negative customer/market perception created by Verizon's rejection of an order due to no facilities is substantial and certainly could be viewed as anti-competitive, particularly for competitors trying to provide a full array of telecommunications products and services.[93]

The other option, which is equally as unappealing, is to absorb the higher monthly and non-recurring costs of a special access circuit in order to keep the customer and avoid having to cancel the order. This option conveniently increases the revenue Verizon collects from the CLEC and increases the CLEC's cost to provide service. Special access circuits do not

[93] Id.

afford competitors access to high capacity services at wholesale prices or allow the CLEC to offer a competitive product with any margin for profitability.[94]

Mid-Maine joins in RevNet's comments relating to the legality of Verizon's no facilities policy. Mid-Maine points out that Verizon's new policy contravenes numerous statements by the FCC that ILECs are required to condition facilities to "transmit the digital signals needed to provide services such as . . . DS-1 level signals."[95] The FCC has long established that ". . . the access and unbundled network elements provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent provides to itself."[96] The FCC also unequivocally rejected an argument raised by GTE that it was not required to provide competing carriers with conditioned loops capable of supporting advanced services where the incumbent is not itself providing advanced services to its customers.[97] Mid-Maine argues that any unilateral decision by Verizon now to degrade the quality of UNEs in comparison to special access or to deny CLECs access to UNEs completely is a violation of the TelAct.

[94] Id. Mid-Maine was further concerned by the fact that there was no seamless conversion process for converting a special access circuit to a UNE after three months but such a process has since been implemented.

[95] Id. at ¶ 49 *citing Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 4761 at ¶ 53 (1998).

[96] Id. *citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, ¶ 312 (1996); *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd. 9587, ¶ 3 (1999); *UNE Remand Order* at ¶ 481.

[97] *UNE Remand Order* at ¶ 173.

Mid-Maine also claims that Verizon is violating the terms of the FCC's *Merger Order* which required the parties to adopt the "best practices" of the merging company in unifying their practices.[98] Verizon's practice of refusing to add DS-1/DS-3 electronics to existing facilities to fill CLEC UNE orders constitutes the adoption by the merged entity of one of the worst practices of the former GTE Corporation, rather than the more pro-competitive policy of the former Bell Atlantic. Thus, Mid-Maine argues that despite its clear obligations under the law, Verizon is attempting unilaterally to impose a position that the FCC has rejected on three occasions.

Verizon. Verizon claims that its policy regarding provisioning of high capacity loops In Maine complies with the TelAct and all applicable FCC rules. Verizon's policy is based on its position that it is not obligated to construct new UNEs on CLEC demand where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers.[99] More succinctly stated, Verizon believes it has no obligation to provide unbundled High Capacity Loops where no facilities are available.

Verizon argues that the complaints by RevNet and Mid-Maine that Verizon contravenes this Checklist requirement are meritless.

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[98] *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, App. D (2000) (*Merger Order)* at ¶¶ 8, 14.

[99] *See DS-1 and DS-3 Unbundled Network Elements Policy*, Verizon-ME, July 24, 2001 (the "Policy Statement").

Verizon notes that Verizon's "no facilities" policy is the same as Verizon-PA's and then cites to the FCC's *Pennsylvania Approval Order* in support of its position that its policy does not violate the FCC's rules and, therefore, does not warrant a finding of checklist non-compliance.[100] Verizon argues that the FCC has specifically found that complaints about the "no facilities" policy are not germane in the context of a 271 proceeding[101] and that any previous rulings from state commissions regarding the interpretation of the term "available" are not relevant to this proceeding. Verizon further claims that there is no evidence that Verizon's "no facilities" policy violates any provision of the Bell Atlantic/GTE FCC Merger Order as Mid-Maine claims.[102]

Verizon cites to the fact that on September 28, 2001, six CLECs filed a letter with the FCC urging the FCC to "to require changes in Verizon's practices of declining to provide DS-1 UNEs based on 'no facilities' available."[103] Verizon claims that in doing so, these CLECs recognized that Verizon's DS-1 and DS-3 "no facilities" policy is not a Section 271 checklist compliance issue. Verizon also notes that on December 20, 2001, the FCC released a Notice of Proposed Rulemaking, which, among other things, "[s]eek[s]

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[100]Ver. Br. at fn. 21 *citing PA Approval Order* at ¶ 92 (citing *MA Approval Order* at ¶ 10, *Texas Approval Order,* at ¶ 23).

[101]Id.

[102]Id. at ¶ 50.

[103]Adelphia Business Solutions, Inc., Broadslate Networks, Inc., Focal Communications Corporation, Madison River Communications, LLC, Mpower Communications, Corp., and Network Plus Inc., Ex Parte Re: Verizon-ME "No Facilities" Policy, CC Docket Nos. 96-98 and 01-138, CCB/CPD No. 01-06, (September 28, 2001) (the "September 28 Letter").

comment on whether application of a more refined impairment analysis would result in a continued requirement of access to all capacity levels for unbundled loops."[104] Thus, according to Verizon, even if the assertions of Mid-Maine and RevNet had merit, CLEC complaints regarding Verizon's "no facilities" policy are a matter that is before the FCC and not a Section 271 checklist compliance issue.

With regard to Mid-Maine's and RevNet's claims that Verizon changed its policy and that the policy is blatantly discriminatory, Verizon argues that it is only required to unbundle its existing network for competitors. Verizon cites to *Iowa III* as support for the proposition that the requirement to unbundle applies only to the network the incumbent LEC already has, not to some superior network that it otherwise would have to build for the requesting CLEC.[105] Verizon argues that network construction is not a UNE and that Mid-Maine and RevNet can hire contractors to place fiber. Verizon points to RevNet's acknowledgment that "Verizon-ME is not required to build new facilities just to provision UNEs."[106]

Verizon claims that it not only meets its unbundling requirements but also exceeds them in certain situations where not all of the

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[104] *See* CC Docket Nos. 01-339, 96-98, and 98-147, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability* "Notice of Proposed Rulemaking" (rel. December 20, 2001) ("the Triennial Review Notice") at ¶ 52.

[105] *Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Circuit 1997), *aff'd in part and rev'd in part*, *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). (*Iowa III*).

[106] RevNet Declaration, at ¶ 21.

necessary facilities are available but the loop can be activated without the need for additional construction or equipment installation. Verizon claims that it has provided the CLECs with extensive information on its "no facilities" policy so that the CLECs can plan their networks accordingly. Finally, Verizon points out that where no facilities exist, "wholesale customers of Verizon, like its retail customers, may request that Verizon provide DS-1 and DS-3 services pursuant to the applicable state or federal tariffs."[107]

Verizon also disputes claims that it is legally obligated to build facilities where no facilities are available. Verizon claims that the FCC's rules and decisions make it absolutely clear that an ILECs' conditioning obligation requires only the removal of equipment that compromises the loop's ability to support certain services, not the installation of additional equipment. Verizon cites to FCC Rule 51.319(a)(3)(i) which defines "line conditioning" as "the removal from the loop of any devices that may diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL service."[108] Verizon also cites to similar language in the *UNE Remand Order.*[109] Verizon claims that Mid-Maine and RevNet would require an ILEC to act as a construction company for CLECs building the kind of facility they want whenever it is technically feasible, whereas the FCC has only required ILECs to

[107] *See* Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.), Attachment 4-1 (Policy Statement) at 2.

[108] Id. at ¶ 98.

[109] *UNE Remand Order* at ¶ 172 (1999).

remove equipment that prevents a loop from being used to provide a service that the loop, without such equipment, is capable of providing.[110]

Verizon reasons that the fact that it does more than is required by the law in some cases but not others is not relevant. To provide better service to its UNE customers, Verizon voluntarily performs certain activities to make facilities available, when doing so is not unreasonably burdensome. Verizon asserts that the CLECs want Verizon to deploy entirely new multiplexers or apparatus cases, which requires far more effort and is far more costly than simply inserting a line card.[111] Further, Verizon claims that the costs of doing so are not recovered in Verizon's DS-1 UNE rate and that granting the relief sought would unlawfully deprive Verizon of the opportunity to recover its costs of providing the DS-1 UNE in violation of Section 252(d) of the TelAct.

b. MPUC Findings

While we agree with RevNet and Mid-Maine that Verizon's policies prevent those companies using Verizon facilities to serve certain customers, we see no value in resolving the issue here. The FCC has the issue squarely before it, and Verizon's obligations will be resolved there within, we expect, a reasonable period of time. We thus do not consider Verizon's conduct with respect to unavailable facilities to provide any basis upon which to conclude that Verizon has failed to meet the Section 271 checklist.

[110] Ver. Br. at 98-100.

[111] Id. at ¶ 100.

However, until such time as the FCC makes its decision, we will require that Verizon provide us with information concerning the orders it rejects (or asks a CLEC to withdraw) because of "no facilities available."

F. Checklist Item No. 5 – Local Transport

1. Applicable Law

Section 271(c)(2)(B)(v) of the TelAct requires Verizon to provide "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." In addition, the FCC requires RBOCs to provide both dedicated and shared transport to requesting CLECs.[112] Dedicated transport has been defined to include RBOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by RBOCs or requesting telecommunications carriers, or between switches owned by RBOCs or requesting telecommunications carriers.[113] Shared transport consists of transmission facilities shared by more than one carrier, including the RBOC, between end office switches, between end office switches and tandem switches, and between tandem switches.[114]

2. Positions of the Parties

Most of the issues raised on this Checklist Item relate to Verizon's dark fiber policies in Maine. In particular, CTC, Mid-Maine, RevNet,

[112] *New York Order* at ¶ 337.

[113] Id.

[114] Id.

and the CLEC Coalition expressed concerns relating to: (1) the information provided to CLECs when Verizon rejects a dark fiber application; (2) the routing of dark fiber and Verizon's requirement that CLECs collocate in all intermediate offices; (3) Verizon's limited splicing policies; (4) repair of CLEC fibers; (5) Verizon's dark fiber inventory practices; (6) Verizon's reservation of fiber for maintenance spares; and (7) Verizon's refusal to groom fiber.

CTC. CTC alleges that Verizon provisions dark fiber in a discriminatory manner because it does not provision dark fiber to CLECs in the same manner as it provides it to itself and its affiliates.[115] CTC argues that Verizon should be required to provide dark fiber in Maine under the same terms and conditions it provides dark fiber in Massachusetts and New Hampshire. CTC claims that if Verizon were required to do so, most of the issues it has raised in Maine would be resolved. CTC extensively briefed all of the dark fiber issues listed above; we will not repeat all of its arguments here but will highlight the relevant arguments and then explain the decisions we have reached below.

a. Information Regarding Dark Fiber Routes.

CTC points out that in Maine, when Verizon informs a CLEC that no dark fiber is available between two points, it says only that and nothing more. CTC finds this practice unreasonable especially given that in New Hampshire Verizon provides a written response which specifies the reasons why dark fiber cannot be provided within 30 days of a CLEC's dark fiber inquiry. In addition, in New Hampshire, Verizon must include detailed information such as

[115] CTC Dec. at ¶ 19.

the total number of fiber sheaths and strands between points on the requested routes. CTC notes that both Rhode Island and New Jersey have recently adopted additional information requirements.[116]

CTC argues that an answer with more information than "not available" allows a CLEC to verify the information provided by Verizon. CTC provided an example in which a fiber request was wrongly rejected by Verizon in New Hampshire and, but for the additional information provided, CTC would not have discovered that Verizon's rejection was erroneous.[117]

b. Collocation Requirements

CTC argues that Verizon's policies in Maine regarding the routing of dark fiber through intermediate offices renders dark fiber less available to CLECs in Maine than in Massachusetts, New Hampshire, Rhode Island, and New Jersey.[118] In Maine, Verizon provides dark fiber transport only where at least one end of the dark fiber transport terminates at a Verizon accessible terminal in a Verizon central office so that the fiber can be cross-connected to the CLEC's collocation arrangement in that central office. Further,

[116] *In re: Verizon-Rhode Island's TELRIC Studies – UNE Remand*, Docket No. 2681, Report and Order, at 22 (Rhode Island PUC, Dec. 3, 2001 (RI Dark Fiber Order)); *In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356, Summary Order of Approval, at 11 (N.J. BPU Dec. 20, 2001).

[117] Exhibit CTC-21, CTC Dark Fiber Inquiry, dated Dec. 28, 2001; Jan. 29, 2002 Tr. at 183:2-10; 201:3-10; Exhibit CTC-22, Dark Fiber Inquiry, dated Dec. 5, 2001; Jan. 29, 2002 Tr. at 202: 2-8,11-25, 203:9-25; 231:21-232:10, 203:9-25; 231:21-232:10. 231:11-25, 232:1-17. *See* Ver. App. B, Vol. 8, Tab 17 for transcript.

[118] CTC Br. at 23.

in Maine, dark fiber is only "offered on a route-direct basis" (*i.e.,* no intermediate offices).[119]

In New Hampshire, Verizon will provide intermediate cross connections in intermediate wire centers without requiring the CLEC to collocate in the intermediate central office.[120] Additionally, Rhode Island ordered Verizon to "splice dark fiber at any technically feasible point so as to make dark fiber continuous through one or more intermediate central offices without requiring a CLEC to be collocated at any such intermediate offices."[121] In New Jersey, Verizon was recently directed to permit CLECs "to route dark fiber through intermediary central offices without the need to establish collocation facilities in each central office" because, *inter alia*, Verizon's collocation requirement "needlessly inflates CLECs' costs."[122] Verizon, however, will not provide cross connects at intermediate wire centers in Maine, and thus continuous dark fiber routes are often unavailable in Maine.

c. Access to Splice Points

CTC claims that in the District of Columbia and Massachusetts, Verizon provides CLECs with access to dark fiber at existing termination points and splice points. For example, Verizon will perform splicing in Massachusetts at the CLEC's request in order to make a fiber strand

[119] CTC Dec. at ¶ 18; Tr. 1/29/02 at 186:24-187:3 (Ver. App. B, Vol. 7, Tab 17).

[120] CTC Dec. at Attachment CTC-10 N.H. SGAT, § 5.16.6(G).

[121] *RI Dark Fiber Order* at 19, 22-23; Tr. 1/29/02 at 186:24-187:3.

[122] *In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356, Summary Order of Approval, at 11 (N.J. BPU Dec. 20, 2001).

"continuous by joining fibers at existing splice points within the same sheath."[123] In Maine, Verizon refuses to "open existing splice points" and perform splicing upon a CLEC's request in order to make a strand "continuous" and available for unbundling.[124] CTC argues that Verizon's splicing policy in Maine is inconsistent with the plain language of Section 251(c)(3) of the TelAct and Competitive Checklist Items 2, 4, and 5, which require Verizon to provide dark fiber on "reasonable terms" and at "any technically feasible point." CTC alleges that as a result of Verizon's policies in Maine, dark fiber routes, including routes through intermediate offices, are more often available in Massachusetts (35% unavailability rate) than they are in Maine (75% unavailability rate).[125] CTC questions how Maine could have a 75% rejection rate for dark fiber inquiries when the fill factor calculated by Verizon is 44.6%.[126]

d. Repair of CLEC Fibers

CTC alleges that Verizon's policies regarding repair of dark fiber are discriminatory. Because the transmission characteristics of dark fiber often degrade over time due to weather factors, accidental damage, repair activities and other factors, Verizon routinely repairs its own fiber to restore the transmission characteristics to a usable level.[127] However, if a CLEC has requested spare dark fiber strands or has leased unbundled dark fiber strands

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[123]CTC Dec. at Attachment CTC-05 (Mass. DTE No. 17, Miscellaneous Network Services, Part B, § 17.1.1.A.1) and at Attachment CTC-06 (Mass. Service Description) at ¶ 1.1.

[124]CTC Dec. at Attachment CTC-07 Verizon's Proposed Interconnection Agreement, §§ 8.5.2, 8.5.3.

[125]Tr. 1/29/02 at 244:7-16; Exhibits CTC-10 and CTC-11.

[126]CTC Dec. at ¶ 17.

[127]Id.

from Verizon, Verizon refuses to make any repairs to the dark fiber strands,[128] except for the cleaning and retrofitting of connectors and other minor repairs.[129] CTC claims that Verizon's policies place CLECs at a competitive disadvantage because degraded fiber may ultimately adversely impact the CLEC's quality of service and may result in less dark fiber availability to CLECs.[130] CTC points out that Verizon's refusal to repair dark fiber for CLECs is contrary to its policy of repairing unbundled copper loops or interoffice facilities.[131]

e. Verizon's Dark Fiber Inventory Process

CTC alleges that Verizon's policies regarding the inventory of dark fiber are discriminatory and effectively result in less fiber being available to CLECs. CTC claims that even though Verizon usually has unterminated loop fibers outside a building in which it terminates some fibers,[132] Verizon will not make dark fiber available to CLECs where the fiber is located in a cable vault, manhole, or other location outside the Verizon wire center and is not terminated at both ends of the route.[133] Verizon considers fiber that is not terminated at both ends and completely spliced to be "under construction" and

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[128] CTC Dec. at ¶ 22 n. 50 *quoting* Verizon's Responses to CTC's First Set of Requests, VZ#275E which responds to CTC request CTC 1-77 ("UNE dark fiber is provided 'as is.'"), and CTC Dec. at Attachment CTC-07 (Verizon's Proposed Interconnection Agreement, § 8.5.18).

[129] Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at ¶ 127; CTC Dec. at ¶ 22 *quoting* Verizon's Responses to CTC's First Set of Requests, VZ#275E which responds to CTC request CTC 1-77 (Verizon will "retrofit or clean connectors on accepted dark fiber circuits in an effort to improve the transmission characteristics of the fiber . . . [However, Verizon] will not retrofit connectors if there are other working services riding fibers within the same ribbon/cable.").

[130] Id.

[131] Id.

[132] Tr. 2/07/02 at 10:14-11:8 (Ver. App. B, Vol. 8, Tab 20).

[133] CTC Dec. at ¶ 23 and at Attachment CTC-07, Verizon's Proposed Interconnection Agreement, §§ 8.5.2, and 8.5.5; Tr. 1/29/02 at 223:21 through 224:12, 257:13-18 (Ver. App. B, Vol. 7, Tab 20).

not part of the dark fiber inventory available to CLECs.[134] Further, when Verizon constructs and installs fiber routes, the fiber is not inventoried and is not available to CLECs until it is terminated at both ends along the route.[135] Indeed, Verizon admitted that it would respond to a CLEC inquiry that dark fiber was unavailable along the requested route, even if, under Verizon's existing construction plan the requested fiber span was a mere two weeks away from completion, resulting in significant new capacity along the requested fiber span.[136]

CTC claims that the record reflects that it is easy for Verizon to do the additional work to add the unterminated strands to its inventory.[137] CTC alleges that Verizon's refusal to do this results in Verizon grossly understating the amount of dark fiber in Maine that should be characterized by Verizon as "available" to requesting CLECs as UNEs because that fiber may readily be usable by Verizon.[138] Further, Verizon does not count fiber that is not terminated at both ends in calculating how much dark fiber it may reserve for maintenance and other purposes, resulting in excessive quantities of "reserved" fibers that are available to Verizon with little effort but not available to CLECs.[139]

CTC directed our attention to a D.C. Public Service Commission (PSC) decision which rejected Verizon's policy regarding the dark

[134] Tr. 1/29/02 at 257:13-18; CTC Dec. at ¶ 23.

[135] Id.

[136] Id.

[137] Tr. 2/7/02 at 6:10-7:4, 13:2-6 (Ver. App. B, Vol. 8, Tab 23).

[138] CTC Dec. at ¶ 23; Feb. 7, 2002 Tr. at 6:20-7:4, 19:1-10.

[139] Tr.1/29/02 at 257:13-18 (Ver. App. B, Vol. 7, Tab 17).

fiber inventory and concluded that unlit fiber that is not attached at both ends (unattached fiber) is within the scope of the dark fiber UNE and should be included in Verizon's dark fiber UNE inventory that is made available to CLECs. CTC argues that the DC PSC concluded that "it is clear that unattached dark fiber is already installed in the network before it is attached to termination equipment, and easily called into service by the attachment of termination equipment."[140] The D.C. PSC expressly rejected Verizon's argument that requiring it to attach termination equipment to unattached dark fiber for CLECs would result in the creation of a superior network.[141]

f. Maintenance Spares

CTC alleges that Verizon's terms, conditions and practices in Maine regarding reservation of dark fiber for maintenance purposes and future growth, and repair of dark fiber, are unreasonable, because they provide Verizon with almost unlimited discretion to limit severely the quantity of dark fiber and routes that are deemed by Verizon to be available to CLECs by designating too many maintenance spares and prematurely reserving spares for "future use."[142] CTC provided a chart comparing the relevant policies in Maine and Massachusetts and urged us to adopt the more reasonable terms, conditions and practices that Verizon has implemented in Massachusetts.

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[140]CTC Br. at 32.

[141]Id. at 32-33.

[142]CTC Dec. at ¶ 19.

g. Grooming Fibers

CTC alleges that even though the process of grooming fibers would free up fibers for use by both Verizon and the CLECs, Verizon will not do so at a CLEC's request.[143] CTC argues that even though moving service from one fiber to another has drawbacks,[144] the fact that Verizon sometimes grooms for its own purposes but does not do so for CLECs "reflects a discrimination that helps facilitate Verizon's hoarding of dark fiber for itself."[145]

CLEC Coalition. The CLEC Coalition urged the MPUC to take immediate action to help eliminate the substantial barriers to competition caused by Verizon's dark fiber policies.[146] The CLEC Coalition specifically requested that we adopt procedures similar to those in New Hampshire, including requiring Verizon to provide CLECs with detailed information and maps relating to dark fiber routes and allowing CLECs to run dark fiber through intermediary central offices without being collocated.

The CLEC Coalition also urged that we require Verizon to inventory all dark fiber strands, whether Verizon has physically terminated them or not. The CLEC Coalition argued that the current process allows Verizon to build substantially complete dark fiber routes between Verizon central offices, perhaps even terminating in one office, but make them available only to Verizon's retail operations by not terminating both ends, which means

[143]Tr. 1/29/02 at 239:11-240:11, 241:6-242:3 (Ver. App. B, Vol. 8, Tab 17).

[144]Id.

[145]CTC Br. at 30.

[146]CLEC Coalition Br. at 7.

they will not be included in Verizon's inventory and will not be available to CLECs. The CLEC Coalition argues that such conduct is discriminatory because Verizon can make this dark fiber available to itself to meet network/customer demands by simply making the final terminations. The CLEC Coalition claims that this "is clearly the kind of discriminatory action which the TelAct seeks to prevent, and the only way this activity can be policed is if there are accurate inventories of all Dark Fiber routes, regardless of whether they are physically terminated or not."[147]

The CLEC Coalition also requested that we clarify the meaning of "technically feasible" connection points with regard to access to dark fiber. The CLEC Coalition claims that Verizon has informed CLECs that dark fiber may only be obtained in central offices or remote switches, and not at poles, manholes, or other reasonable splice points even though it admitted during a conference call that it would in fact be feasible to interconnect at manholes.[148] The CLEC Coalition maintains that while there may be costs associated with establishing a hard termination point at splice locations, there are no real technical reasons why dark fiber can only be interconnected at central offices and remote switches. Accordingly, the CLEC Coalition recommends that we find that dark fiber may be interconnected at any splice point where it is feasible to install "termination gear."[149]

[147] Id.

[148] Id.

[149] Id.

RevNet. RevNet alleges that it has not been able to get dark fiber when it requested it and points to a specific incident in September of 2001, relating to a request that Verizon terminate dark fiber to a particular pole.[150] RevNet received conflicting information from Verizon regarding whether the dark fiber could be terminated at a location where a termination point did not already exist.[151] There was further confusion regarding the various applications that needed to be filed. RevNet asserts that Verizon has failed to carry its burden of showing that it provisions dark fiber to CLECs in the same manner as it provides to itself and its affiliates. RevNet points to the overall rejection record as evidence that Verizon does not treat CLECs in a manner similar to the manner in which it treats itself and its affiliates with respect to the provision of dark fiber network elements. Finally, RevNet urges the Commission to consider the policies in New Hampshire and Massachusetts.

Verizon. Verizon claims that it makes dark fiber available to CLECs pursuant to the FCC's *UNE Remand Order* at rates set in our TELRIC proceeding. Verizon argues that its methods and procedures of provisioning dark fiber in Maine are consistent with the requirements prescribed by the FCC in its *UNE Remand Order* and similar to those in effect in New York. Further, Verizon claims that this 271 proceeding is not the appropriate forum for resolving these issues.

Verizon argues that it is not obligated to provide dark fiber in Maine in accordance with its dark fiber offering in Massachusetts, New

[150]RevNet Dec. at ¶¶ 29-30.

[151]Id. at 30-40.

Hampshire, or any other state and that its offering in Maine is the same or similar to Verizon's dark fiber offering in every state in the former Bell Atlantic service area (except for Massachusetts, New Hampshire, and more recently Rhode Island and the District of Columbia), including Vermont, New York, Connecticut, and Pennsylvania.[152] Verizon notes that the FCC found Verizon's unbundled loop and transport offerings, including dark fiber, in New York, Connecticut, and Pennsylvania to be in compliance with its checklist requirements.

Verizon claims that when state commissions have recently ordered Verizon to modify its dark fiber offerings, they have done so in separate administrative or arbitration proceedings and not in 271 proceedings. Thus, according to Verizon, we should limit our review to whether Verizon's offering in Maine complies with the TelAct, not how that offering compares to commission-mandated dark fiber offerings in other states.

In response to CTC's claims concerning its reservation and maintenance spares, Verizon argues that it does not artificially limit the amount of dark fiber available by characterizing it as "maintenance spares."[153] Verizon claims that its policy regarding maintenance spares is consistent with industry standards and provides for a small number of spares in order to ensure network reliability. Verizon also disputes CTC's claims regarding its reservation of strands for future use. Verizon states that its practices are

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[152]Ver. App. B, Vol. 2a-f, Tab 3 **(**Checklist Dec.) at ¶ 218; *see also,* Ver. App. B. Vol. 7, Tab 13 (Supp. Checklist Dec.) at ¶ 123.

[153]Ver. Br. at 39 *citing* Verizon Exh. 3 (Supp. Checklist Dec.), at ¶ 125. Tr. 1/29/02, at 221-225.

reasonable and help ensure that Verizon will be able to properly maintain and augment its network.

Verizon argues that CTC's arguments concerning repair policies are misleading. Verizon claims that if unbundled dark fiber is broken or cut and the fiber is incapable of transmitting light, Verizon will repair the fiber using the same processes and procedures that Verizon uses to repair its own broken facilities.[154] Verizon believes that what CTC seeks is not really repair of broken or cut fiber cables or strands, but rather to improve the quality of unbundled dark fiber to provide a superior unbundled product.[155] Verizon argues that the decision of the United States Court of Appeals for the Eighth Circuit in *Iowa III* made it clear that "subsection 251(c)(3) [of the Act] implicitly requires unbundled access only to an incumbent LEC's existing network—not to a yet unbuilt superior one."[156] Verizon also argues that it is *not* required to construct new transport facilities to accommodate specific CLEC point-to-point requirements for facilities that the incumbent LEC has not deployed for itself and thus has no obligation to splice fiber through intermediate offices.[157]

Verizon strongly opposes any requirement that CLECs be permitted to interconnect their fiber optic facilities to Verizon ME's dark fiber facilities at existing splice points. Verizon claims that interconnection

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[154]Ver. Br. at 40.

[155]Id. at 40

[156]*Iowa Utilities Bd. v. FCC,* 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part and rev'd in part on other grounds, AT&T v. Iowa Utilities Bd.,* 119 S. Ct. 721 (1999).

[157]Ver. Br. at 42; Tr. 1/29/02, at 187 (Ver. App. B, Vol. 7, Tab 20).

(between carriers) at fiber optic splice points seriously impairs and degrades network reliability and that splice points are not designed as a location to test or repeatedly connect and disconnect service.[158] Repeated splicing would give rise to an unacceptably high risk of causing customer service outages.[159] Verizon claims that the FCC recognized in the *UNE Remand* Order that access to dark fiber should be provided through an accessible terminal in the incumbent's outside plant where the fiber can be accessed without requiring any splicing.[160] Verizon alleges that the FCC distinguishes accessible terminals from splice cases, which are inaccessible, because the case must be breached to reach the fibers.[161]

Verizon also argues that the Massachusetts Department of Telecommunications and Energy ruling, which was made prior to the *UNE Remand Order* and which found that it was technically feasible for Verizon to provide interconnection at splice points, does not establish the technical feasibility of providing such access. Verizon points to the fact that no CLEC, including CTC, has actually requested access to dark fiber at a splice point in Massachusetts as evidence that splicing is not necessary for CLEC operations.[162]

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[158]Ver. Br. at 43. *citing* Tr. 1/29/02 at 187-196.

[159]Id.

[160]Id.

[161]Id. at 395.

[162]Tr. 1/29/02 at 190 (Ver. App. B, Vol. 7, Tab 20); Tr. 2/7/02, at 15 (Ver. App. B, Vol. 8, Tab 23).

Verizon responds to CTC's arguments regarding its inventory process by claiming that CTC failed to provide any evidence that there is more dark fiber available in Maine than Verizon has represented and by asserting that unterminated fiber facilities are extremely rare.[163] Verizon claims that in the loop portion of the network, it usually terminates all of the fibers at an accessible termination point within buildings being served when it installs new fiber facilities. Verizon does admit, however, that there may be some fibers that are not constructed and terminated all the way back to the central office but argues that any such fibers do not constitute existing in-place inventoried fiber span and are not available to Verizon or the CLEC.[164] Verizon asserts that substantial additional construction would typically be required in order to complete such partial facilities so that they would be put in inventory for use by CLECs or by Verizon for retail service.[165]

With regard to the CLEC Coalition's claims, Verizon argues that they raise the same issues as CTC or raise specific disputes that are not a proper subject for a 271 review. Verizon does, however, respond to RevNet's allegations concerning access to unbundled dark fiber between Verizon's central office in Portsmouth, N. H., and a splice point on a telephone pole in Kittery, ME.[166] Verizon claims that its denial was in accordance with the

[163]Tr. 2/7/02 at 17-18.

[164]Tr. 1/29/02 at 261; Tr. 2/7/02 at 10-12.

[165]Tr. 1/29/02 at 258-266; Tr. 2/7/02 at 10-14, 17-18.

[166]The A location was in New Hampshire and the requested Z location was a splice point on telephone pole 1753/8-1R, located on Gray Lodge Road, Kittery, ME.

terms and conditions of its Maine Interconnection Agreement with RevNet which limit access to a pre-existing hard termination point and specifically prohibit termination at splice points.[167] According to Verizon, a telephone pole is not an existing termination point for the deployment of fiber services.[168] Verizon claims that the terms and conditions of the interconnection agreement were agreed to by the parties and reflect Verizon's obligations under the *UNE Remand Order*.

3. MPUC Findings

We have carefully considered all of the parties' arguments concerning dark fiber and find that the changes to which Verizon has agreed address most of our concerns regarding Verizon's practices. There are, however, several areas of contention, more fully discussed below, which warrant MPUC investigation. If, after developing a full record, we find that changes to Verizon's terms and conditions are necessary, we will order them.

We do not believe our concerns warrant a finding that Verizon fails to meet this Checklist item. Verizon has provided sufficient evidence to show that, taken as a whole, it meets the requirements of Checklist Item No. 5. In order to develop a fuller record upon which to take specific action relating to Verizon's dark fiber terms and conditions, we have requested that

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[167] Id.

[168] Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at ¶ 133.

Verizon file a dark fiber tariff for our review by May 1, 2002.[169] Verizon has agreed to file the tariff.[170]

We discuss below the resolutions of the specific issues raised by the CLECs.

a. Information Regarding Dark Fiber Routes.

We agree with CTC and the CLEC Coalition that the information Verizon provides to Maine CLECs when Verizon rejects an order for dark fiber for lack of facilities is inadequate. Verizon is the only party with unfettered access to network maps showing where dark fiber is available. To simply reject the CLEC's request without further information, especially if an alternate route is readily available, turns the process of ordering dark fiber into nothing short of a guessing game. We do not believe this is what Congress or the FCC intended when RBOCs were required to open their networks to competition.

We reviewed the New Hampshire Public Utilities Commission's order on dark fiber and agree with its approach. During the hearings and at the post-hearing negotiations, there were many discussions regarding the particular information that should be provided to CLECs when the specific route they have requested is unavailable.[171] After consideration of all of the parties' concerns, we requested, in our March 1, 2002 letter to Verizon, the following:

[169] See MPUC letter to Verizon dated March 1, 2002 (Ver. App. B, Vol. 8, Tab 25).

[170] See Verizon letter to MPUC dated March 4, 2002 (Ver. App. B, Vol. 8, Tab 26).

[171] See Tr. 1/29/02 at 203-205.

> If a dark fiber inquiry reveals there is no dark fiber available, Verizon will, upon separate request from a CLEC, provide the CLEC with written documentation and a fiber map within 30 days of the request. The documentation will show the following information:
>
> - a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates;
> - the total number of fiber sheaths and strands between points on the requested routes;
> - the number of strands currently in use or assigned to a pending service order;
> - the number of strands in use by other carriers;
> - the number of strands assigned to maintenance;
> - the number of spare strands; and
> - the number of defective strands.
>
> The CLEC will be billed a non-recurring charge per request for cable documentation to reimburse VZ-Maine for the costs incurred in providing the CLEC with the Documentation. Until the Commission approves a Maine-specific rate for providing this information, Verizon may charge the NH cable documentation rate of $132.02.

In its March 4, 2002 letter, Verizon agreed to implement these new policies relating to dark fiber as soon as possible.

b. Collocation Requirements

We agree with CTC and the CLEC Coalition that Verizon's policies requiring CLECs to collocate in all intermediate offices cause CLECs to incur unnecessary cost and to build a less efficient network. Given that Massachusetts, Rhode Island, New Jersey, the District of Columbia, and New Hampshire all require Verizon to provide cross connects in intermediate offices, we see no reason why it should not provide the same service in Maine. Accordingly, in our March 1, 2002 letter, we required that Verizon:

> provide access to dark fiber to CLECs in Maine consistent with its policy in Rhode Island, as set forth in section 10.2.1(G) of Verizon RI's wholesale tariff, so as to provision continuous dark fiber through one or more intermediate central offices without requiring the CLEC to be collocated at any such offices.

In its March 4, 2002 letter, Verizon agreed to implement this provision until we approve a dark fiber tariff for Maine.

c. <u>Access to Splice Points</u>

We have considered carefully the allegations concerning Verizon's refusal to allow CLECs access to splice points (or at least access by Verizon personnel on behalf of the CLECs). We have also reviewed the decisions by other state commission, including those in Massachusetts, Rhode Island, and the District of Columbia. MPUC Staff has spent considerable time discussing this issue with both CLECs and Verizon to try to better understand the issues. Our collective efforts revealed substantial confusion by Verizon, the CLECs, and state regulatory commissions. Specifically, there appears to be some confusion between what various state commissions have ordered and what Verizon actually offers through its tariffs. It also appears that there has been confusion regarding exactly what the term "splicing" means. Unfortunately, the confusion increases exponentially as each commission relies upon another commission's order.

We do not wish to further cloud this issue. The record is insufficient for a determination regarding the technical feasibility of splicing Verizon fiber to Verizon fiber or splicing Verizon fiber to CLEC fiber at splice points in Verizon's network. Thus, as stated earlier, we will evaluate these issues, and others, when Verizon files its dark fiber tariff on May 1, 2002. Given that this issue has been decided in different ways by different state commissions, we do not believe that the pendency of this issue precludes a finding that Verizon has met this Checklist item.

d. Repair of CLEC Fibers

We agree with CTC that, because fiber often degrades over time and Verizon controls all access to the fiber, Verizon should be required to provide the same repair services to CLECs as it does to itself. If Verizon refuses to repair fiber that degrades over time and refuses to let CLECs access Verizon's fiber sheaths, CLECs will be forced to order new dark fiber prematurely and incur unnecessary costs. We note that Verizon agreed in New Hampshire to repair CLEC fiber, both on an emergency basis and during routine maintenance, in the same manner as it repairs its own fiber. We agree with this approach and included in our March 1, 2002 letter the following conditions:

i. In the event Verizon must perform emergency cable restoration to its facilities, all efforts will be made to restore the CLECs' leased unbundled dark fiber pairs in the same manner as other fibers in the same cable sheath using Verizon's standard restoration procedures.

ii. If an entire ribbon degrades and Verizon would in the ordinary course of business repair the fiber, it shall repair all of the strands in the ribbon, regardless of who uses the individual strands.

In its March 4, 2002 letter, Verizon agreed to both conditions.

e. Verizon's Dark Fiber Inventory Process

We have considered the allegations on this issue and find that they warrant further review. It appears that Verizon's inventory practices provide opportunity for anti-competitive behavior. We have no evidence that directly proves any such behavior and thus do not find that Verizon does not meet this Checklist item on these grounds. Nevertheless, we plan to conduct a thorough investigation of Verizon's practice of not entering unterminated fiber into their inventory system.

Verizon's practice, at first glance, also seems at odds with findings we made in our TELRIC order concerning fill rates for fiber. Further, while Verizon claims that it "cannot" do anything different because of the legacy systems it uses to keep track of fiber, we find that it is more accurate to state that Verizon "will not" do anything different because it chooses to continue to use these systems. Nothing prevents Verizon from creating or using a new system that would allow it to electronically track all of its fiber, whether it has been terminated or not. We recognize, however, that there are legitimate arguments concerning whether Verizon has a legal obligation to track the fiber and/or terminate the fiber. Thus, during our review of Verizon's dark fiber tariff, we will consider this issue and determine whether any changes to Verizon's inventory system are necessary and appropriate.

f. Maintenance Spares

We have considered CTC's arguments concerning Verizon's reservation of fiber for maintenance spares in Maine. During the hearings and the negotiating sessions, MPUC Staff repeatedly asked Verizon about this issue and was told that the policies in Maine were the same as they are in Massachusetts.[172] With regard to reserving fiber for future projects, Verizon repeatedly stated that it followed the same policy in Massachusetts where it can only reserve fiber for a pending service order.[173] Verizon's assertions appear to contradict the information contained in CTC's brief as well as responses provided to data requests.[174]

We find that the policies adopted in Massachusetts are appropriate (with the exception of the category of "up to 24 fibers") and we will rely on Verizon's testimony that the same policies apply in Maine. To the extent that there is any difference, Verizon must conform its Maine policies to the Massachusetts policies except that we will allow Verizon to reserve four fibers in the "up to 24 fibers" category because we believe four fibers are technically necessary.

g. Grooming Fibers

We have reviewed CTC's contentions as well as the statements on this issue at the hearings and during negotiations. We find that the record is insufficient to reach any legal conclusions regarding whether

[172] Tr. 2/7/02 at 14 (Ver. App. B, Vol. 8, Tab 23).

[173] Id.

[174] CTC Br. at 28-30; Ver. Response to Bench Req. 3-12.

Verizon is legally obligated to groom fiber so that additional fiber is available to CLECs. During our review of Verizon's dark fiber tariff, we will consider this issue and determine whether any change in Verizon's policy is necessary and appropriate. We do not believe that this issue warrants a finding of non-compliance with this Checklist item.

h. Conclusion

In conclusion, we find that while there are several issues related to dark fiber which require additional investigation and review, none rises to the level or falls within a category that warrants a finding of non-compliance. Verizon has agreed to several very significant improvements in its provisioning of dark fiber in Maine. In addition, Verizon has provided sufficient evidence of its compliance with the Checklist Item for the purposes of 271. Whether additional changes to Verizon's dark fiber policies are warranted under state law is a matter that can and should be handled by the Commission in a later proceeding.

G. Checklist Item No. 13 – Reciprocal Compensation

Section 271(c)(2)(B)(xiii) of the TelAct requires that Verizon's access and interconnection arrangements with CLECs provide for "[r]eciprocal compensation in accordance with the requirements of Section 252(d)(2)."

1. Positions of the Parties

OPA. The OPA alleged that the existence of a billing dispute over reciprocal compensation indicates non-compliance for this Checklist item.

Verizon. Verizon countered that the OPA's allegation involves purported reciprocal compensation for traffic delivered by Verizon to Brooks Fiber/WorldCom's "regional FX" service.[175] Verizon noted that the Commission has expressly determined that traffic delivered by ILECs to Brooks Fiber for this service is not "local" traffic and has ruled explicitly that no reciprocal compensation is due. Verizon also noted that Brooks Fiber/WorldCom has not raised any claim in this proceeding that Verizon is unlawfully withholding reciprocal compensation payments. Finally, according to Verizon, the FCC has found that the existence of reciprocal compensation disputes relating to ISP-bound traffic is an insufficient basis for finding noncompliance with Checklist Item 13.[176]

2. MPUC Findings and Recommendations

We agree with Verizon's arguments concerning its compliance with this Checklist Item. We also note that the OPA did not include arguments concerning this item in its final brief, an indication that it no longer considers this issue a problem in Maine. Thus, we find that Verizon meets the requirements of Checklist Item 13.

H. Checklist Item No. 14: Resale Obligations

1. Applicable Law

Section 271 (c)(2)(B)(xiv) of the Tel Act requires Verizon to make "telecommunications services available for resale in accordance with the

[175]Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at 138.

[176]NY Approval Order, at 377; MA Approval Order at 215.

requirements of sections 251(c)(4) and 252(d)(3)." According to Section 251(c)(4)(A), ILECs are required "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 251(c)(4)(B) prohibits the imposition of any unreasonable or discriminatory conditions or limitations on resale "except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." Section 252(d)(3) states that "[f]or purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunication service requested, excluding a portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

2. Positions of the Parties

CTC. CTC argues that Verizon imposes several unreasonable and discriminatory restrictions on the resale of customer specific arrangements ("CSA")[177] such that, as a practical matter, CSAs are effectively unavailable for resale by CLECs in Maine. First, CTC claims that Verizon makes it extremely difficult for a CLEC to determine the terms of a CSA, such as traffic volumes and service commitments that qualify a customer for the CSA, so that a

[177] The term CSA is used herein to include customer specific pricing arrangements, "special contracts" as defined in Verizon's Maine Tariff PUC ME No. 15 at Section 1.8.7, and other similar contractual arrangements.

CLEC can identify a similarly situated customer.[178] CTC alleges that Verizon routinely informs its customers that the terms of CSAs constitute "competitively sensitive" Verizon information and typically includes in its CSAs non-disclosure or confidentiality provisions that absolutely preclude the customer from disclosing the terms and conditions of a CSA to third parties.[179]

CTC claims that although Verizon says that it will provide resellers with information regarding the terms of a CSA, including "the salient term and volume requirements of the contract," in practice Verizon has refused to provide such information to CTC.[180] As a result, CTC has experienced a "Catch-22" type situation in which it is unable to obtain the terms of a CSA either from the customer or from Verizon. CTC cites to a request for the terms of a CSA, to which Verizon responded that it "will not provide a copy of the contract" because "[e]ach one is unique" and CTC should "obtain it from the customer when you have an end user that decides to assign it to you."[181]

CTC's second major concern with CSAs relates to Verizon's routine inclusion in its CSAs of non-assumption or non-assignment clauses that often contain an absolute prohibition on assignment of a CSA.[182] CTC argues

[178]CTC Dec. at ¶ 35.

[179]CTC Dec. at ¶ 35 *quoting* Verizon's Responses to CTC's First Set of Requests, dated Nov. 8, 2001, Response VZ#300 which responds to CTC request CTC 1-102; Tr. 1/29/02 at 62:11-22 (Ver. App. B, Vol. 8, Tab 20).

[180]CTC Dec. at ¶ 35.

[181]CTC Dec. at ¶ 35 and at Attachment CTC-13.

[182]Attachment to Verizon's response to Record Request No. 1, Section Miscellaneous (e) ("Provided Customer provides Verizon with reasonable prior written notice, Customer may assign or transfer this Application to any company that is the successor to substantially all of its assets. All other attempted assignments shall be void without the prior written consent of the other party"); Tr. 1/29/02 at 76:3-22 (Ver. App. B, Vol. 8, Tab 17).

that even when the non-assignment clause permits an assignment upon written approval of Verizon, Verizon never consents to an assignment of a CSA.[183]

CTC argues that, consistent with the ruling of the FCC in the *Bell South South Carolina Section 271 Proceeding* and other orders, Verizon is obligated to permit the resale of CSAs with the wholesale discount in addition to any special pricing in the underlying CSA.[184] With respect to the application of the wholesale discount, CTC rejects Verizon's distinction between resale of a CSA where the CLEC resells to a similarly situated end user, and an assignment of a CSA.

Verizon. Verizon claims that no other party has previously raised arguments relating to CSAs in any other 271 proceeding. Thus, the dispute between Verizon and CTC over Verizon's obligations regarding the resale of CSAs amounts to a "new interpretative dispute" regarding Verizon's obligations related to CSAs for resale. Verizon maintains that the FCC has held on numerous occasions that "new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors . . . that do not involve *per se* violations of the Act or our rules are not appropriately dealt with in the context of a section 271 proceeding."[185] Asserting that CTC's declaration

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[183]Tr. 1/29/02 at 78:2-4 ((Ms. Maher) ("our policy is that if there is a nonassignment clause in the contract, we will not consent to that assignment."), 79:9-12.

[184]CTC Br. at 46.

[185]Ver. Br. at 59 *citing PA Approval Order* at ¶ 92.

contains a number of inaccurate or misleading claims, Verizon sets forth a detailed response to CTC's allegations.[186]

In response to CTC's complaint regarding non-assumption clauses, Verizon asserts that no evidence exists that these provisions were put in the CSAs so that resellers could not assume these contracts.[187] It further argues that the inclusion or exclusion of these provisions is not a 271 issue - at most, it is a tariff or contract issue. In a tariff or contract context, non-assignment or non-assumption clauses serve an important commercial purpose – they preclude the assignment of the contract by one party to an unrelated third party without the consent of the other party.[188] Verizon argues that such clauses are standard and typically found in any commercial contract and are included in CSAs only by mutual agreement of Verizon and the customer. Verizon believes that precluding it from signing contracts with such language would put Verizon at a competitive disadvantage vis-à-vis other telecommunications carriers which are not subject to such a restriction.[189]

Verizon responds to CTC's legal arguments concerning the FCC's ruling in the *BellSouth South Carolina Section 271 Proceeding* by claiming that it is only obligated to permit the resale of CSAs with the wholesale discount

[186] Verizon Br. at 58-63.

[187] Id. at 60.

[188] Id.

[189] Id. at 61.

once a CSA has been assigned to a CLEC.[190] Verizon argues that CTC fails to properly distinguish between two different concepts: (a) the "assignment" of a CSA to a CLEC by the existing end-user; and (b) the "resale" of a CSA by a CLEC. According to Verizon, if the CSA does not contain a non-assignment provision, Verizon permits the assignment of a CSA to a CLEC.[191] As part of this "assignment," no early termination penalty is imposed on the end user. Verizon claims that the CLEC "steps into the shoes" of the retail subscriber when it assumes an existing CSA and effectively becomes Verizon's retail customer for the duration of the contract, subject to all the terms and conditions of the agreement – including price, term and volume commitments. Thus, according to Verizon, the resale discount is not appropriate when a CLEC has accepted the assignment of the CSA from the end-user since the CLEC is not purchasing a contract service for resale, but is instead obligating itself, *via* assignment, to Verizon for the retail service agreement in place.

Verizon defines the resale of a CSA, which is subject to the wholesale discount, as the CLEC provision of service for the remaining term of the CSA to: (a) an existing end user who migrates to a CLEC by severing its retail relationship with Verizon (and paying any termination liability charge required); or (b) any similarly situated end user.[192]

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[190] Id. *citing First Local Competition Order*, at 11; FCC Rcd at 15,970; *Application of BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, at ¶ 219 (1997) ("*Bell South Section 271 South Carolina Proceeding*").

[191] Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at ¶ 148.

[192] Ver. Br. at 58.

Verizon claims that it does provide general information regarding specific CSAs to CLECs upon request, including the salient term and volume requirements of the contract so that the CLEC can determine whether a CSA available for resale may meet the needs of the CLEC's existing or prospective end-users.[193] Verizon also stated during the hearings that should a customer be willing to have a CLEC become the reseller of its existing contract with Verizon, that customer is *not* precluded from disclosing its contract to the CLEC, and Verizon remains willing to include specific language in the CSAs to that effect.[194]

3. MPUC Findings

During the hearings, Verizon committed to filing redacted copies of its CSAs with the Commission so that they might be available to CLECs for inspection. During post-hearing negotiations and in its March 4, 2002 letter, Verizon agreed to create a list that contains all existing CSAs and that would disclose the following for each contract: the term of the contract, the product, volume, and price. With respect to future CSAs, Verizon committed to file redacted copies of all customer-specific contracts with the Commission within 30 days of the signing of the contract. We believe these steps resolve CTC's concerns regarding access to the terms and conditions of CSAs.

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[193] Ver. App. B, Vol. 7, Tab 13 (Supp. Checklist Dec.) at ¶ 150.

[194] Tr. 1/29/02 at 65 (Ver. App. B, Vol. 8, Tab 17).

With regard to CTC's arguments concerning non-assignment clauses, we are not persuaded. It does not appear unreasonable that a contract by either Verizon or the CLECs with end users may include non-assignment language. We agree with Verizon's arguments concerning the circumstances under which the wholesale discount should apply. If there is an existing CSA that the CLEC steps into, the discount does not apply because the CLEC is replacing the end user with itself. Since Verizon does not charge an early termination penalty for such a change, this is a continuation of the existing contract, not a new contract. Furthermore, Verizon has already incurred most, if not all, of the avoidable costs that the wholesale discount is representing, e.g., marketing. However, if this is a new contract, the wholesale discount would apply.

We find that the modifications discussed above address our concerns and thus we find that Verizon meets the requirements of Checklist Item No. 14.

V. PUBLIC INTEREST

A. Applicable Law

The FCC has repeatedly stated that, in addition to the competitive checklist items enumerated at 47 U.S.C. Section 271 (c)(2)(B), the TelAct requires an applicant to show that "the requested authorization is consistent with the public interest, convenience, and necessity."[195] The FCC has emphasized

[195] 47 U.S.C. Section 271(d)(3)(c).

that the public interest test goes beyond complying with the competitive checklist, and addresses this matter separately in its decisions.[196]

While the FCC has stated that compliance with the competitive checklist provides a strong indication that long distance entry is consistent with the public interest, the FCC has also stated that checklist compliance alone is not conclusive as to the public interest requirement.[197] The FCC's *SBC Kansas/Oklahoma Order* provides a discussion of the factors that are to be considered in addressing public interest:

> [W]e view the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of these applications. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that

[196] Memorandum Opinion and Order, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 273 (2001) ("SBC Kansas/Oklahoma Order").

[197] *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA Services in Michigan*, 12 FCC Rcd 20543 at ¶ 389 (1997).

> nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition. [198]

While Verizon believes it has no obligation to make a showing to us regarding why its 271 application should be considered to be in the public interest, it acknowledges that it must make such a showing to the FCC. Accordingly, because the FCC looks to state commissions for guidance on all aspects of a 271 filing, we will provide our analysis of the public interest issues that were raised in our proceeding.

B. <u>Issues Raised</u>

There were four distinct public interest concerns raised in our proceeding. First, several parties questioned whether Verizon's past conduct in providing non-discriminatory access had complied with the requirements of Section 271. These concerns are addressed in Section IV.C. above relating to compliance with Checklist Item No. 2. Second, three parties raised issues relating to UNE pricing in Maine. These concerns are also addressed in Section IV.C. above. Third, the OPA alleged that the current the lack of competition in Maine precludes a finding that Verizon's entry into the long distance market is in the public interest. This issue is discussed below. Fourth, much of our focus in this proceeding was on ensuring that Verizon's post-entry conduct would remain in compliance with section 271. These future compliance issues were divided into several sub-issues: Verizon's carrier to carrier metrics; Verizon's performance assurance plan; and adoption of a Rapid Response Process to deal

[198] *SBC Kansas/Oklahoma Order* at ¶¶ 272 -273.

with future inter-carrier disputes in a timely manner. Each of these issues is discussed below.

C. Lack of Competition

1. Positions of the Parties.

OPA. The OPA alleges that "Maine is definitely the state with the least amount of competition among FCC-approved §271 filings."[199] According to the OPA, CLECs serve 6.57% of access lines in Verizon-Maine's territory[200] and resale accounts for almost the entire market share of CLEC served lines in Maine.[201] The OPA believes that this is a problem because, "[R]esale is not true competition because it is difficult for competitors to distinguish themselves from Verizon to the consuming public, since those competitors must provide the same services at about the same service quality as Verizon."[202] The OPA points to the fact that Verizon acknowledged that facilities-based and UNE competition make up only a fraction of the 6.57% of CLEC lines served and that Verizon could not "…identify or confirm the existence of any residential facility-based competition in Maine, and does not even know whether the companies that it suspects are offering residential service in fact have any customers."[203]

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[199] OPA Br. at 30.

[200] Id.

[201] Id.

[202] Id. at 31.

[203] Id.

Thus, the OPA requests that before supporting Verizon's 271 application, we "…identify the reasons why the ongoing level of local competition in Maine is so low, and fashion a remedy that will lead to significant competition in the local market."[204] The OPA further requests that we establish a process under which we will "…review the UNE rates in effect in other New England jurisdictions, and when changes in those rates have occurred re-establish Maine's UNE rates so that they fall into a reasonable and competitive range."[205]

Verizon. Verizon argues that the *Sprint* decision clearly determined that "market share" is totally irrelevant to the determination of checklist compliance.[206] Verizon alleges that this holding echoes the consistent position of the FCC that Congress did not intend a market share evaluation to become the test for whether the market was open to competition.[207] Thus, Verizon claims that there are no "volume requirements" in the Checklist and that the OPA's concerns are without merit.

2. MPUC Findings

We have previously addressed, in Section IV.C.4 above, the OPA's request for a review of the UNE rates. No showing has been made that our rates are not TELRIC compliant.

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[204] Id. at 33.

[205] Id.

[206] Id. at 95.

[207] See, *e.g.*, *SBC Kansas/Oklahoma Approval* at ¶ 268.

The OPA's allegation concerning the low level of competition in the State of Maine requires further discussion. There does not appear to be a clear standard or approach to this issue. The FCC has stated that to qualify for 271 approval under Track A, a RBOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers." The TelAct states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[208] The FCC concluded in its *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.[209] The FCC has declined to a set standard for determining what constitutes predominant provision of service over a carrier's own facilities.

The word "predominant" typically means "[h]aving greatest ascendancy, importance, influence, authority, or force" or "[m]ost common or conspicuous; prevalent."[210] Thus, Congress' use of the word "predominantly" in Track A suggests that a facilities-based competitor's "own" facilities must comprise at least the majority of its overall local exchange network facilities, if it also resells services obtained only from a RBOC, or a plurality of the competitor's

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[208] 47 U.S. C. § 271(d)(3)(A)

[209] See *Ameritech Michigan Order*, 12 FCC Rcd at 20589 at ¶ 85.

[210] The American Heritage Dictionary: Second College Edition 976 (1982).

total network facilities, if it resells services procured from a RBOC and one or more other carriers.[211] However, the FCC has consistently refused to define what is meant by predominant and to adopt a market share or other similar test for RBOC entry into long distance."[212]

Likewise, the FCC's *Ameritech Michigan Order* made it clear that this element of the Track A test is satisfied when a competing carrier is serving more than a *de minimis* number of end users. However, it did not reach the question of what the result would be if the number of lines served by a competitor were *de minimis*. The FCC also did not provide a quantitative indication of what would constitute more than a *de minimis* number of competitively served access lines.[213]

The FCC's decision not to impose a market share test for Track A requirements has seemingly been coupled with an inclination to be satisfied with very low levels of CLEC penetration into the residential market in particular and into a state's telecommunications market in general. For example, the FCC found that Southwestern Bell satisfied its Track A requirements in Missouri even though CLECS serve only about 5% of end user lines in that state,

[211]*See* 141 Cong. Rec. E1699 (daily ed. Aug. 11, 1995) (statement of Rep. Tauzin) (delivered on Aug. 4, 1995) (indicating that in order to satisfy the "predominance" test, more than 50 percent of a competitor's facilities must be "owned by the competing provider, or owned by entities not affiliated with" the incumbent BOC).

[212]*See* e.g., *Ameritech Michigan Orde*r, 12 FCC Rcd at 20585, ¶ 77 and i*n the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, FCC 01-338, Rel. November 16, 2001 (*Arkansas/Missouri Order*) at ¶126.

[213]*Ameritech Michigan Order* at ¶ 78.

a rate lower than the 6.57% rate in Maine.[214] Furthermore, the FCC decided that Track A requirements were met in the SBC Kansas/Oklahoma 271 case where competitors served between 9.0 and 12.6 percent of total Kansas service-area access lines and between 5.5 and 9.0 percent of all Oklahoma access lines.[215]

In addition, while parties have pointed out that competition in Maine is negligible, no party has provided evidence that it has fallen below the *de minimis* levels as defined, albeit loosely, by the FCC. Furthermore, we are hampered in our determination of this issue by the fact that Verizon has failed to provide a comprehensive public interest assessment and recommendation.[216]

Thus, we conclude that the decision on this aspect of the Track A test is not driven by the arguments that the number of residential customers being served by CLECs is small, or even "minimal." As we have noted above, it appears that the percentage of end user lines serviced by CLECs in the state of Maine falls within the realm of previously accepted FCC Track A requirements. Thus, given that we have not been provided with a comprehensive public interest assessment and recommendation by Verizon, on the grounds that such an analysis was beyond the scope of our review, we leave the determination of whether or not Verizon has met the 271 Track A requirements to the FCC.

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[214] Local Telephone Competition: Status as of June 30, 2000, *Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission*, December 2000, Table 5, page 10.

[215] *SBC Kansas/Oklahoma Order* at ¶¶ 4 -5.

[216] Ver. Br. at 93-95.

We note that when the Arkansas Commission was faced with a similar question regarding whether the degree of residential competition in Arkansas was sufficiently large to satisfy the Track A requirement, it deferred the issue to the FCC.[217] The FCC subsequently ruled that:

> Given an affirmative showing that a market is open and the competitive checklist has been satisfied, low customer volumes in and of themselves do not undermine that showing. [footnote omitted] The Arkansas Commission is cognizant of the levels of residential competition in Arkansas and believes that recent reductions in UNE rates may result in additional residential services being offered through leased network elements. [footnote omitted] We have repeatedly held that factors beyond a BOC's control, such as individual competitive carrier entry strategies, for instance, might explain a low residential customer base. We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we do not establish one here.[footnote omitted][218]

Like Arkansas, we believe that our recently adopted UNE rates may result in additional residential services being offered through leased network elements and thus will leave to the FCC any further discussion or determination on this issue.

D. PAP

Verizon proposed a comprehensive, self-executing, wholesale service performance enforcement mechanism called the Verizon Performance

[217] Arkansas Commission Comments, *attaching Application of the Southwestern Bell Telephone Company For Authorization to Provide In-Region, InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996 and For Approval of the Arkansas Interconnection Agreement*, Docket No. 00-211-U, Second Consultation Report of the Arkansas Public Service Commission to the Federal Communications Commission Pursuant to 47 USC Section 271(D)(2)(B), (May. 21, 2001) at p. 12.

[218] *Arkansas/Missouri Order* at ¶ 126.

Assurance Plan ("PAP") in its October 18, 2001 filing with the Commission. The PAP proposed by Verizon was modeled on the Verizon New York plan, and is very similar to plans approved for Verizon in Massachusetts, Connecticut, Rhode Island and Vermont.

For several reasons, discussed in detail below, the PAP originally proposed by Verizon was unacceptable to us. During the course of our 271 review, the PAP was the subject of intense debate and, as a result, numerous modifications were recommended by the Commission and accepted by Verizon. A revised PAP, consistent with these agreements was filed at both the Commission and FCC on March 29, 2002.

We believe that Verizon's revised PAP is consistent with the public interest, convenience and necessity, as required under 47 U.S.C. § 271(d)(3)(C). The revised PAP provides a comprehensive, self-executing enforcement mechanism intended to deter backsliding and the provision of substandard performance. In determining which PAP to adopt in Maine, we were persuaded, in part, that by having a PAP which is largely the same as that in other states, Maine could benefit from the results of work done by other states with larger staffs. However, we have also requested, and Verizon has agreed to provide, additional data in order for us to "shadow" the New Jersey style, bottom-up PAP that MPUC Staff proposed in our 271 proceeding.[219] The Commission will re-evaluate, when we begin our first review of the PAP in six months, the efficacy of the Verizon PAP we have approved.

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[219] Ver. App. B, Vol. 8, Tabs 25-26.

To be clear, we believe that the PAP Verizon has proposed is sufficient to meet the public interest standard under Section 271. However, we also believe that there are many different ways to structure a PAP and that our continued examination of issues related to the PAP may bring to light additional facts or concerns that necessitate updating or changing the PAP we recommend today. We do not believe that Verizon's concurrence is required for the implementation and enforcement of changes to the PAP that are authorized or required by the TelAct, Maine law, or the terms of the FCC's order granting Section 271 relief.

Throughout this proceeding, the discussion of the PAP has been divided into four categories of features: general attributes, metrics, parity methods and penalty mechanisms. The following discussion is intended to explain our conclusions about the PAP and to describe the process that led to our conclusions.

1. General Attributes

Despite the fact that Verizon's proposed Maine PAP was modeled on the PAP in place in New York (and other New England states), Verizon made several modifications to previously approved PAPs in its proposal for Maine. Some of the proposed modifications were acceptable and have been included in the PAP filed by Verizon on March 29, 2002. Others were not acceptable and thus, for the reasons described below, we requested the following changes, all of which Verizon agreed to and included in the PAP filed on March 29, 2002:

1. Verizon's Proposed PAP provided that PAP remedies were exclusive of any remedies required by interconnection agreements. We requested that Verizon modify its PAP to provide that if, as of March 1, 2002, a CLEC had an approved interconnection agreement for the State of Maine that provided for performance penalties, the CLEC would be entitled to receive penalties under both the PAP and the interconnection agreement until the termination date of the agreement.

2. Verizon's Proposed PAP had an effective date of the first day of the month after Verizon entered the interLATA market. We believe that Verizon's wholesale performance should not be allowed to deteriorate, regardless of when Verizon is granted entry into the long distance market in Maine and thus requested that the effective date of the PAP be the first day of the month (May) after we file our comments with the FCC.

3. Verizon's proposed PAP included provisions for a possible annual review and/or audit of the PAP. Given the complexities of the PAP, we believe that an audit will be essential after the first year to determine if it is functioning properly. Thus, we requested, and Verizon agreed, that there be a mandatory audit after the first year at Verizon's expense, and thereafter any audits would be at the Commission's discretion but at Verizon's expense. [220]

[220] Id. We note that the actual language on p. 23 of the PAP concerning the audits includes several references to "the Commission and Verizon ME" reviewing and/or determining that changes are necessary. We once again state our belief that we do not need Verizon's concurrence for the implementation and enforcement of changes to the PAP that are authorized or required by the TelAct, Maine law, or the terms of the FCC's order granting Section 271 relief.

4. Verizon's Proposed PAP put 36% of net return at risk, unlike other states where 39% has been at risk. Thus, we requested that the dollars at risk must be 39% of Verizon-Maine's net return based upon 2000 ARMIS data for Maine.

5. Verizon's Proposed PAP contained lower flow-through targets for Maine of certain measures due to a different mix of wholesale orders in Maine. We requested that Verizon phase-in meeting the same flow-through targets in Maine as it does in New York, i.e. 95% for Achieved and 85% for Total after a 12-month period.

All of the changes described above have been incorporated into Verizon's Maine PAP, thereby alleviating our concerns about the general provisions of the PAP.

2. Metrics

a. <u>C2C Guidelines</u>

Verizon proposed Maine C2C Guidelines and measures of wholesale services on May 1, 2001, with modifications on December 18, 2001, and March 12, 2002. The Guidelines are a comprehensive set of performance measures that are substantially the same as the C2C Guidelines created by an industry collaborative in New York and have been adopted in other states. We have reviewed the C2C Guidelines, held a technical conference on them, and encouraged parties to suggest modifications or additions. We found very little controversy regarding the existing metrics themselves.[221] Thus, for purposes of measuring Verizon's wholesale performance in Maine, we adopt the C2C Guidelines proposed by Verizon on March 12, 2002.

b. PAP Metrics

While there was limited debate on the Guidelines, there was considerable discussion regarding which of the metrics should be included in the PAP and whether any additional metrics were necessary for PAP purposes. The metrics proposed by Verizon for inclusion in its Maine PAP were a subset of the metrics contained in the Guidelines. The Verizon proposal included 189 metrics in four Mode of Entry categories (Resale, UNE, DSL and Interconnection Trunks) to measure Verizon's performance at the industry level. The Critical Measures section of the proposed PAP included 70 metrics from the Mode of Entry section plus three additional metrics for collocation, which measure Verizon's performance at the industry level and individual CLEC level. There was a Special Provisions section of the PAP that included the four specific areas of: UNE Flow Through; UNE Order Confirmation; Hot Cut Loops; and Electronic Data Interface Notifiers. Finally, it contained an OSS Change Control

[221] On the eve of our filing of these Comments we learned of a misunderstanding between the Commission and Verizon concerning the use of non-parametric parity methods for C2C reporting purposes. Specifically, the Commission was under the impression that the non-parametric methods would be used for both PAP and C2C reporting while Verizon was under the impression that the non-parametric methods would only be used for PAP purposes. We have discussed this matter with Verizon and Verizon has committed to work in good faith with the Commission to accommodate the Commission's concerns on this issue. We do not believe this issue rises to the level of impacting our decision regarding Verizon's compliance with Section 271.

Assurance Plan that included four metrics that cover timeliness of notification, quality of interface, and timeliness of problem resolution.[222]

AT&T proposed its own Performance Incentive Plan (PIP) as an alternative to the Verizon PAP. In the PIP, AT&T recommends using the metrics contained in the Local Competition Users Group (LCUG) Service Quality Measurements (SQMs) Version 7.0 August 28, 1998, which contains 27 SQMs in eight categories.

The OPA accepted the measurements that Verizon proposed to include in the Maine PAP, but proposed that we require Verizon to add a few more metrics from theC2C.[223] The OPA also recommended three new billing metrics or adopting the new Rhode Island billing metrics.[224] The OPA supported Verizon's proposal to carry over changes in the New York metrics into the Maine metrics as they occur if notice is provided to the parties.

The CLEC Coalition proposed several new metrics.[225] At the negotiations held by MPUC Staff on February 19, 2002, it was agreed by the CLEC Coalition, Staff and Verizon that there were metrics already existing in the C2C guidelines that would measure essentially the same aspects of Verizon's service that the CLEC Coalition was interested in measuring and using

[222]The PAP will also include several metrics relating to late or inaccurate C2C reports. These metrics were inadvertently left out of the discussions leading to our March 1, 2002 condition letter. Verizon and MPUC are currently working to finalize appropriate language for inclusion in the PAP.

[223]Brevitz Dec. at 10.

[224]Ostralander Dec. at 24.

[225] 1/28/02 response to data request from 12/19/01 technical conference, Exhibit 2 from 1/29 hearing.

the existing metrics had the advantage that they were already developed and being measured by Verizon.

Initially, Staff recommended adopting a set of metrics, based largely on the New Jersey metrics, to be consistent with its recommendation to adopt a New Jersey-style PAP. After considering comments at the January Technical Conference and written comments on the Bench Analysis, it became clear that using the metrics proposed by Verizon would be administratively simpler because the computer systems to record and report on those metrics were already in place.[226] Thus, Staff supported using the Verizon Proposed PAP metrics as the baseline. In addition, based in part on the recommendation of parties in this proceeding, Staff recommended the addition of several metrics from the C2C Guidelines for addition to the PAP, including many of the metrics proposed by the OPA. Verizon did not object to the inclusion of the additional metrics and they were reflected in the March 29, 2002 PAP filing

At the time of the first PAP review, we expect to consider the addition of metrics to measure service areas where problems have been encountered and reported by Maine CLECs that currently are not captured by the metrics used in the PAP.

[226] For similar reasons Staff did not pursue adopting the metrics proposed by AT&T. The document containing the metrics was several years old and metrics that were more comprehensive and more reflective of current market activity existed. It should be noted that AT&T did not object to the metrics discussed at the working session in February 2002.

c. Special Access Measures

In addition to the PAP metrics, Verizon has agreed to provide reports on its provisioning of Special Services. Early in this case, AT&T filed comments relating to Verizon's provisioning of Special Services and requested that we adopt the three Special Services metrics that the New York Public Service Commission ordered Verizon to begin reporting in October 2001. Staff originally agreed that Verizon should report the same Special Service Metrics that Verizon is currently reporting in New York.

In discussions with Verizon during the February negotiations, Verizon argued it was not appropriate for it to report all of the new New York metrics because of the current product mix in Maine and that it would require substantial work to develop the metrics to report in Maine. Verizon proposed to report measures that report Verizon's performance in provisioning special access services, including Intra and Interstate but excluding non-access services, as follows: the percent of orders completed on time; the average number of delay days for orders missed; the percentage of installation troubles reported within 30 Days; the percent of missed appointments due to lack of facilities; the customer trouble report rate; and mean time to repair. These metrics and their description are attached. *See* Attachment A.

Given the current state of development of the market in Maine, Staff and the CLECs were satisfied that the reporting that Verizon offered to do in Maine (that is substantially the same reporting that it will be doing in New Hampshire) was sufficient pending the outcome of the FCC's Special

Access proceeding. The special access metrics are not part of the PAP because penalties for missing the benchmarks have yet to be developed. In addition, the PAP metrics being adopted in Maine are for wholesale service performance. The special access metrics measure Verizon's performance on a retail service, and we have yet to determine if it would be appropriate to include those measures in the PAP.

3. Parity Measures

One of the issues that garnered the most attention in our review of Verizon's PAP was the method by which Verizon proposed to measure whether the service it provided CLECs was in parity with the service it provided its retail customers. Verizon, AT&T, and MPUC Staff submitted performance assurance plans that included methods for estimating whether parity exists between Verizon's retail and wholesale services. While the OPA did not sponsor a specific PAP, it did include a proposed parity estimation method in its final comments. The OPA also submitted a declaration that provided a basis for including the comparison of the variances (or standard deviations) of the wholesale and retail metric data as part of parity determinations, which the Staff also recommended.

In this section, we discuss the methods proposed by Verizon as well as those proposed by other parties and the Staff. In addition, we discuss issues that we intend to study further and consider during our first year review and audit of Verizon's PAP: the relationships between Type I and Type II errors and the proper accounting for those errors; whether Verizon's retail metric data should be restricted to business service results; and the proper and consistent statistical treatment of parity metric data and benchmark metric data.

a. Parity Estimation Methods

i. Positions of the Parties

Verizon. The parity methods Verizon initially proposed are identical to those in its New York PAP. Verizon's parity estimation methods apply the theory of hypothesis testing in mathematical statistics, the objective of which is to decide, based on a random sample of a certain size, whether to accept or reject a particular hypothesis about the population (or process) from which the sample was taken. Verizon claimed that its use of a modified Z or t statistic to determine whether its parity standard has been met provides a 95% level of confidence. The PAP proposed by Verizon also contained a "conditional" miss at a 79% confidence level. Under Verizon's proposal, a conditional miss would require Verizon to miss the metric again in at least one of the two subsequent months after the month in which the conditional miss occurred in order to trigger penalties. Staff's Bench Analysis contains a more detailed analysis of Verizon's statistical parity methods.[227]

Since its original proposal, Verizon has modified its PAP to accommodate our concerns regarding its methodologies. Those concerns and Verizon's modifications are discussed below.

[227] Ver. App. B, Vol. 7, Tab 14 (Staff's Bench Analysis). Please note: we are attaching to this order two corrected pages of the Bench Analysis that should replace pp. 31-32 of Verizon's copy because certain mathematical symbols did not appear properly in documents the MPUC previously issued. *See* Attachment B.

AT&T. The statistical parity methods AT&T proposed are the same as those proposed by Verizon, with one significant exception: AT&T's methods account for both Type I and Type II errors, whereas Verizon's methods account for Type I errors (the probability of false rejection of parity), but do not recognize Type II errors (the probability of false acceptance of parity). Specifically, AT&T derives a value of the "t" test statistic – which it calls an "error-balancing" statistic – based on assuming the Type I and Type II errors are equal. Staff's Bench Analysis recommended that we adopt the error-balancing statistic, because it accounts for both Type I and Type II errors. We will discuss this statistic and Type I and Type II errors further below.

OPA. The OPA's parity method is based on an exact binomial distribution test to determine whether there are equal numbers of transactions for which Verizon's retail performance exceeds, or is exceeded by, its wholesale performance.[228]

Staff. As stated above, MPUC Staff proposed an alternative PAP in this proceeding. Staff's proposed PAP included parity estimation methods that differed substantially from those proposed by Verizon. The major difference is that the Staff required the parity determination to include a comparison of both the averages and the variances [or standard deviations] of the wholesale and retail metric data. Staff offered two methods. For concluding parity exists, Staff's "preferred" method required that Verizon's wholesale and retail metric data averages *and* standard deviations, respectively, be within 5%,

[228]OPA Br. at 12-15.

10%, or 20% of each other, depending on the number of wholesale and retail transactions during the month. Thus, parity would obtain if both the wholesale and retail averages are close enough, and the wholesale and retail standard deviations are close enough.[229]

Staff's "alternate" method revised Verizon's proposed statistical parity methods. Under Staff's alternate method, parity would exist if: first, a statistical test of the ratio of the wholesale and retail variances of the metric data is not rejected; and, second, if a test of the differences between the wholesale and retail averages is also not rejected, where the variance of that difference is based on the weighted average [i.e., the "pooling"] of the wholesale and retail variances.[230]

b. MPUC Findings

The statistical parity methods Verizon initially filed test the hypothesis that its wholesale and retail metric data samples come from normally distributed populations that have equal average values. If the hypothesis is not rejected, Verizon can claim parity exists. Both Staff's Bench Analysis and the OPA's declaration observed, however, that Verizon's parity methods could indicate parity exists and yet the metric data samples, and their underlying populations, could have vastly different standard deviations. Staff and the OPA argued that the standard deviations, which measure the variability of the

[229] Ver. App. B, Vol. 7, Tab 14 (Staff's Bench Analysis).

[230] *See* id. for a detailed explanation of Staff's proposed parity methods.

metric data, are as important as the metrics' averages in assessing whether Verizon's wholesale and retail services are of comparable quality.

As a component of assessing parity, therefore, Staff recommended a test be used to determine whether the variances of Verizon's wholesale and retail metric data are comparable. Verizon responded that the test Staff proposed (an "F" test) requires that the wholesale and retail metric data come from normally-distributed populations, and provided several sets of metric data plots that show the metric data to be heavily-skewed, which would invalidate the variance test Staff proposed. (See Attachment C.) But heavily-skewed metric population data also invalidate the statistical parity methods Verizon initially filed, as those methods also require that the wholesale and retail metric data samples come from normally-distributed populations.

To compare Verizon's wholesale and retail performance with wholesale and retail metric population distributions that are inherently heavily skewed, we would now need to be concerned not only with whether their sample averages and standard deviations are comparable, but also with whether their skewness measurements are comparable. Staff's Bench Analysis called our attention to certain "normalizing" mathematical transformations (such as logarithmic and square root transformations) that, when applied to skewed metric data, can result in the transformed metrics' statistical distributions being more symmetric, if not normally-distributed.

Our 271 proceeding, however, did not investigate the effectiveness of such transformations; therefore, we do not believe we can require their use to deal with the effects of heavily-skewed metric data on parity determinations that, for them to be accurate, require the metric data to be normally-distributed.[231] Instead, we will require Verizon to use non-parametric methods which require no assumptions to be made about the inherent shapes of the statistical distributions of the metrics' wholesale and retail populations. We believe such methods are more suitable for analyzing samples of skewed metric data.

In our March 1, 2002 letter we conditioned our support of Verizon's 271 application upon Verizon's use of non-parametric, "distribution-free" methods to estimate parity. In its March 4, 2002 reply, Verizon agreed to our condition, and on March 29, 2002, filed a PAP which, for all sample sizes, uses permutation testing for measured (continuous variable) metrics and Fisher's Exact Test for counted (discrete variable) proportion and rate metrics. We support Verizon's modified PAP. However, Verizon will provide us with sufficient data to enable us to analyze fully the statistical properties of its wholesale and retail metric data, so that when we conclude our first review of Verizon's PAP we will be in a position to confirm or change the methods for measuring parity.

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[231] We note also that the attached data plots show effects on the metric data of logarithmic transformations; although the transformed data plots are somewhat less skewed than the original data plots, they are far from being symmetric, much less normally-distributed.

c. Type I and Type II Errors

i. Positions of the Parties

Verizon. Verizon assumes the Type I error is 5% for all parity metrics, but does not recognize Type II errors.[232]

AT&T. As we indicated above, AT&T derived its "error-balancing" statistic based on the assumption that the Type I and Type II errors are equal. This statistic is a function of: the numbers of wholesale and retail transactions; a parameter ("lambda") equal to the ratio of the wholesale and retail variances; and a "materiality" parameter ("delta") that measures the difference between zero (the mean of the null (parity) hypothesis) and the mean of the alternate hypothesis. (That difference equals delta times the retail standard derivation.) AT&T – for all metrics – assumes that lambda equals one (i.e., that the wholesale and retail variances are equal) and that delta equals 0.25 (i.e., that the mean of the alternative hypothesis is 0.25 times the retail standard derivation less than (or greater than) zero, the mean of the null (parity) hypothesis).

OPA. The OPA opposed Verizon's use of a 5% Type I error; its mitigation of the Type I error by eliminating "conditional (-1) misses" in its penalty mechanism; and its failure to recognize the Type II error. The OPA did not recommend a parity method that incorporates the Type II error; instead, apparently because increasing the Type I error decreases the Type II error, the OPA recommended Verizon's Type I error be set at 12.5%,

[232] *See* Appendix D of Verizon's March 29, 2002 PAP.

which, the OPA observed, is midway between Verizon's proposed 5% Type I error and the Type I error associated with a "conditional miss," which is about 20%.

ii. MPUC Findings

AT&T's error-balancing statistic seems quite reasonable in that it minimizes the total error inherent in a hypothesis test of parity. We do not require the use of the error-balancing statistic, however, because it is unlikely that the same values of lamda and delta can fit the differences between the wholesale and retail statistical distribution of each and every parity metric, i.e., every parity metric would have to have the same wholesale statistical distribution curve and the same retail distribution curve.

We also decline to adopt the OPA's recommended 12.5% Type I error. Decreasing any inherent Type II error by increasing the Type I error is an interesting approach. However, this particular recommendation, as well as the relationship between Type I and Type II errors, needs more analysis than it has received in our proceeding before we can consider including it in a PAP.

We are interested in the thorough analysis that the California Commission has done on this subject, the results of which are described in its Order of March 6, 2002 (Decision 02-03-023) on a performance incentives plan for Pacific Bell. For both aggregate and individual CLEC parity test results, the California Commission set Type I errors of 5%, 10%, or 20%, depending on sample size and on whether aggregate CLEC results pass or fail parity. We will examine the analysis supporting this approach during our first-year review of Verizon's PAP.

In general, for any parity method that is based on the statistical theory of hypothesis testing, its tests for parity should be powerful enough to detect a true difference from the null (parity) hypothesis when such a difference – i.e., an alternate hypothesis – actually exists. We have asked Verizon to work with the parties and the Staff to analyze Type I and Type II error approaches, and Verizon has agreed to do so. If that effort bears fruit, we will consider it during our review of the PAP. Meanwhile, because the Verizon PAP's penalty mechanism is anchored to critical values based on a 5% Type I error, the PAP will use a 5% Type I error, as proposed by Verizon.[233]

d. <u>Other Issues Requiring Further Study</u>

Sample incompatibility is a term the OPA used to describe the fact that Verizon's retail metric data includes both residential and business services results, whereas Maine's CLECs' wholesale metric data includes, in overwhelming proportions, business service results only. The OPA recommended that Verizon's retail metric data be restricted to business service results, so as to achieve "apples-to-apples" comparisons with the CLECs' wholesale service results.[234] This is an interesting observation, and one that we

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[233] Verizon's Proposed PAP included tables for metrics with standards of 95%, 90%, 85%, and 80% for metrics with small sample sizes. In anticipation of the fact that Maine may have many metrics with small sample sizes each month, the calculations in these tables were of keen interest. Staff made several suggestions to modify these tables. Verizon has developed the requested tables and they are included in the March 29, 2002 PAP filing.

[234] We note that a recent study by the NRRI reports that for certain services, business customers receive better service than residential customers. Michael H. Lee, Jay Driscoll, and Kate Whitney, <u>*Cross-Subsidies in Service Quality and Reliability: An Examination of the Qwest's*</u>

will examine further during our review of the PAP. However, at this time, we do not believe that it is necessary to make any specific modifications to Verizon's PAP.

Staff's Bench Analysis points out that parity metric data are treated as random samples while benchmark metric data (which make up most of the metrics in Verizon's PAP) are treated as population data. It seems logical that parity metric data and benchmark metric data are both subject to sources of random variation, or both are not; if both are, then benchmark metric data should be treated and analyzed as random samples; if both are not, then parity metric data should be treated and analyzed as population data. We intend to study this issue further and hope to resolve it during our first review of Verizon's PAP.

4. Penalty Mechanism

The penalty mechanism portion of the PAP was also contested in our proceeding. In addition to Verizon's proposed mechanism, AT&T and MPUC Staff submitted penalty mechanisms for our consideration. Essentially, we were asked to decide between Verizon's New York-style "top-down" approach, which takes a set amount of total dollars and allocates them to various categories using complex formulas, and Staff's New Jersey-style "bottom-up" approach, which sets a penalty amount for each type of violation and simply adds all the individual penalty amounts to get the monthly total.

Local Exchange Markets. NRRI Quarterly Bulletin, Volume 21, Number 2 (Winter 2001): 131-142.

a. Positions of the Parties

Verizon. As stated above, Verizon's PAP contains a "top-down" approach in which a set amount of dollars is allocated to various categories that contain certain of the metrics.[235] A fixed amount of dollars (based on a prorating of the amounts agreed upon in New York) is assigned to each category and subcategory, and those amounts are the maximum penalty dollars at risk to Verizon. Verizon's PAP also contains rules that are used to calculate the severity of the failure, with greater penalties imposed as performance becomes worse, as compared to the established standard.

Weights are assigned to each measure in the Mode of Entry category, and a scoring mechanism is used to determine the amount of the penalty, based on the weighted average scores, which account for the severity of the failure. The PAP also contains scoring provisions for each of the other categories that are used to determine if Verizon owes penalties for not meeting the performance standards, and if so, the amount of the penalties. Finally, the PAP sets out a mechanism for allocating the penalty amount to the individual CLECs that experience substandard performance.

AT&T. AT&T proposed its own Performance Incentive Plan (PIP) that contains a comprehensive set of comparative measurements that monitor all areas of support without giving preference to any particular mode of market entry. The AT&T PIP penalty mechanism contains a two-tier structure that contains a procedural cap that would trigger a PUC

[235] The major categories of metrics are Mode of Entry (with 4 subcategories), Critical Measures (with 12 areas of performance), Special Provisions (3 subcategories) and the Change Control Assurance Plan.

investigation into the root causes of Verizon's performance in the event penalty payments become unusually high.

CLEC Coalition. In its Comments on the Staff's Bench Analysis, the CLEC Coalition stated its preference for the "bottom up" feature of the NJ IP as having the:

> benefit of identifying specific problems which are plaguing each CLEC, problems which would be lost in the statitistical maelstrom of the New York plan but which have a real and practical impact on the ability of CLECs to compete against Verizon. If a situation arose at some point in the future where Maine had such a robust and diverse competitive market that it would be realistically impossible to address the individual CLECs through the metrics, then the CLEC Coalition believes the Commission has the ongoing authority to modify this PAP to address that hypothetical scenario. But the fact is, right now, the "Bottom Up" approach is best suited for the small and fragile competitive market in Maine.

Thus, the CLEC Coalition recommended the Commission adopt the NJ IP, including its penalty mechanisms, as an interim PAP, and that we open a proceeding to develop a permanent PAP.

MPUC Staff. MPUC Staff, in its Bench Analysis, proposed a PAP that closely resembles the Incentive Plan (IP) approved by the New Jersey Board of Public Utilities (NJ-BPU) in Verizon's 271 application for that state. Staff argued that the penalty mechanism contained in the New Jersey-style PAP is easier to understand and apply than is Verizon's proposed New York-style PAP. Staff believed that New Jersey's "bottom up" approach the New Jersey penalty mechanism provides a more direct link between substandard performance and payments to affected CLECs. Under the New

Jersey plan, penalty amounts increase with the magnitude of the miss, the volumes of affected transactions and the duration (measured in number of months) of the substandard performance. Also, at least for the per unit measures, penalty amounts are paid directly to the affected CLECs based on their level of substandard performance.

In addition, under the New Jersey plan, the amount of penalty dollars potentially at risk is nominally unlimited, although from a practical viewpoint, Verizon's wholesale performance would need to deteriorate to an extremely substandard level and remain there for an extended period of time before the penalty amount became exorbitant. MPUC Staff proposed that if the penalty amount reached some fairly high level in any month, Verizon would have the opportunity to seek some form of relief from the Commission. MPUC Staff asserted that a benefit of its proposed plan is that Verizon would not view the penalty amount as merely a cost of doing business, but rather it would have a real incentive to provide a satisfactory level of wholesale service to CLECs .

b. MPUC Findings

At this time, we find that the PAP penalty mechanisms proposed by Verizon should be implemented as part of our recommendation that Verizon be allowed into the interLATA market in Maine. As a condition of our support for Verizon's 271 application, however, we adopted the revision to the "-1 curing" process developed by the Vermont Public Service Board, whereby a metric's performance that scores a –1 ["a conditional miss"] will be changed to a 0 performance ["parity"] if Verizon achieved 0 scores for that metric in the two *previous* months rather than in the two successive months, as in Verizon's proposed PAP. Without this revision, Maine's CLECs would have to wait 3 months after the occurrence of the –1 performance to learn if they are to receive a credit for Verizon's inferior wholesale performance. As in Vermont, Verizon agreed to this revision.

We find that, with certain modifications that are described in other sections of these Comments, the Verizon PAP contains a sufficient dollar amount at risk and an acceptable mechanism for calculating the actual penalty amount to meet our goal of deterring backsliding. We recognize that a PAP similar to the one proposed by Verizon has been accepted for use in at least five other states, and we see some benefit in having Verizon operate under a uniform plan to the extent possible.

Verizon's PAP provides financial incentives for a broad range of measures and standards, and it provides Verizon with sufficient incentives to provide CLECs with high quality services. Also, pursuant to the terms of the PAP itself, we will be able to make changes to the metrics, weightings and penalty amount allocations, if we find that changes are necessary and appropriate for the effective operation of the PAP.[236]

It is also possible that after we have some experience with the operation of the PAP in Maine, we may find that differences in the competitive local exchange market between Maine and other states lead us to reconsider our current finding and, after following the appropriate procedures,

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[236]We again note our belief that Verizon's concurrence is not necessary for the implementation of any changes we find necessary under the TelAct, Maine law, or FCC rulings.

adopt a different type of PAP, such as the one proposed by Staff. We believe that ongoing monitoring of local exchange competition by the Commission is a crucial part of our responsibility to take all steps to remove any barriers to competition.

We will continue to monitor Verizon's wholesale performance and have adopted, as a condition of our favorable recommendation, a provision that requires Verizon to provide the raw data needed to compare the penalties that would result from use of the MPUC Staff-proposed PAP with the penalties that actually result from the adopted PAP. We will use this comparison as a key piece of information (but not the only one) in evaluating the ongoing effectiveness of the PAP that we have approved. After we have had sufficient actual experience, which we expect will be between six and twelve months, we will begin a formal review of the adequacy of the adopted PAP.

E. Rapid Response

1. Background

Early in our proceeding, the CLEC Coalition indicated that its chief concern with Verizon related to the significant difficulties CLECs encountered in achieving timely, reasonable, and effective resolution of issues between individual CLECs and Verizon. The CLEC Coalition urged us to create a "rapid response team" with the authority to resolve disputes and assess penalties against Verizon for any activities which inhibit competition. The CLEC Coalition argued that without a rapid response process, there would not be sufficient protections to ensure open and irreversible competition in Maine and that once Verizon gained entry into the InterLATA market it would be even less inclined to resolve CLEC/Verizon disputes.

In its Brief, the CLEC Coalition proposed a specific rapid response process (RRP) which included a step-by-step explanation of how the RRP would work, including time frames, standards to be used in determining what constitutes a sufficient filing, and how penalties could be assessed.[237]

Verizon was not initially supportive of a RRP as envisioned by the CLEC Coalition.[238] Verizon argued that the Commission should not delegate its authority to resolve disputes to Staff. Verizon claimed that there was no source of rules or policies to guide the Staff on questions of law and policy in the wholesale marketplace. Verizon also argued that the Commission would need to conduct a formal rulemaking to create a RRP.

After the briefs were filed, MPUC Staff conducted a negotiation session with Verizon and all other parties concerning many issues, including the RRP. At that meeting, and in subsequent meetings with Verizon, MPUC Staff developed a RRP which was agreeable to the Commission, Verizon, and the CLECs. (*See* Attachment D.) In our March 1, 2002, letter to Verizon we specifically conditioned our support of its 271 application on its acceptance of the RRP. In its March 4, 2002 letter, Verizon accepted our conditions, and thus, accepted the RRP.

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[237]CLEC Coalition Br. at 9 and Appendix A.

[238]Ver. Br. at 95.

2. MPUC Findings

We agree with the CLEC Coalition that the availability of a RRP is essential to the development of competition in Maine. Over the course of the last year, MPUC Staff have held a series of meetings with CLECs and Verizon concerning wholesale service issues. The overwhelming theme of these meetings has been the difficulty that Maine CLECs have in getting responses from Verizon when problems or questions arise. It appears very clear to us that the relatively small size of the Maine market and Maine CLECs makes Maine less of a priority to Verizon, the larger corporate entity. Indeed, larger CLECs in more urban areas have a specific Verizon employee dedicated to their needs while Maine CLECs share one employee who also deals with independent ILEC issues.

Significant progress has been made in recent months in this area, in large part due to the participation of high level Verizon personnel in our meetings and their commitment to personally handle issues from Maine CLECs that are not being adequately addressed. While both the Commission and the CLECs appreciate their efforts, we believe a more formal process is necessary to ensure that the timely resolution of problems continues – especially if, and/or when, these employees are moved to different positions.

It has also become clear over the last year that MPUC involvement, even at the informal level of listening to a call between a CLEC and Verizon, usually leads to a quicker resolution of a problem than would otherwise occur. Indeed, CLECs have repeatedly stated that they were "getting nowhere" until they called a MPUC staff member who, in turn, called a Verizon regulatory employee and requested resolution of the issue. The "bright light" of the Commission apparently motivates all involved to make every effort to resolve the differences.

With the help of both the CLECs and Verizon, we have developed a RRP which:

(1) Delegates to Staff the authority to resolve disputes between CLECs and Verizon and between two CLECs;

(2) Requires all parties to attempt to resolve the dispute before coming to the Commission but does not set a specific level of effort or particular level of escalation within Verizon;

(3) Provides for preliminary relief pending final resolution where appropriate;

(4) Sets up a series of phone conferences (or live meetings, if necessary) to facilitate the gathering of relevant facts, the full discussion of the issue and its business impacts on all parties, and the resolution of the complaint;

(5) Allows the parties to appeal adverse decisions to the full Commission; and

(6) Provides for the imposition of penalties on either Verizon or the CLEC for failure to comply with an order of the RRPT.

We believe that each of these features is essential and that the very existence of the RRP will encourage Verizon to resolve CLEC issues more expeditiously. Thus, we endorse the adoption of the RRP attached to these Findings.

VI. CONCLUSION

For the reasons set forth above, we find that Verizon as met the requirements of the Section 271Checklist .

Dated at Augusta, Maine, this 10th day of April, 2002.

BY ORDER OF THE COMMISSION

____
Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond